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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 176

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

JOHN G. MACLEAN, ADMINISTRATOR OF SELMA HALLBOM

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR CERTIORARI FILED JUNE 3, 1930

CERTIORARI GRANTED OCTOBER 13, 1930

(35,098)

( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No.

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

SELMA HALLBOM

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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[fol. 1]

IN PROBATE COURT OF KANDIYOHI COUNTY

In the Matter of the Estate of JACOB E. HALLBOM, Also Known as JACOB ENOCK HALLBOM, Decedent

AMENDED FINAL ACCOUNT AND PETITION FOR SETTLEMENT

Your petitioner respectfully represents and shows to the court:

First. That he is the surviving representative of the estate of the above named decedent.

Second. That as such representative he has fully administered the said estate, has paid and satisfied all claims against said estate allowed by the court, and has in all things complied with the orders of this court in said matter and with the law relating thereto.

Third. That he herewith renders his final account of his said administration, which is as follows, to-wit:

[fol. 2]

Receipts

Personal property described in the inventory	$994.49
Cash from other sources: Received World War Veterans' Insurance from U. S. Veterans' Bureau, June 25, 1928	9,116.00
Total receipts from all sources	$10,110.49

Disbursements

II. Expenses of Administration

Loss from sales of personal property at less than appraised valuation	$173.92
Cash paid for publication of orders	21.60
Expenses of representative	26.60
Compensation of representative	50.00
Fees of attorney	125.00
Expenses of attorney	13.50
Total expense of administration	$410.62

III. Expenses of Last Sickness

Cash paid for medical attendance and hospital	$556.55
Total expense of last sickness	$556.55

IV. Funeral Expenses

Cash paid for undertaker	$265.00
Total funeral expenses	$265.00

VI. Claims of Creditors

Claims of creditors as allowed by the court as follows: [fol. 3] 6-22-26, including interest thereon to Aug. 25, 1928:

Claim No.	Name of claimant	Amount allowed	
1.	Fred Hallbom	$720.07	$814.03
2.	Fred Hallbom, Jr., by Fred Hallbom, Sr.	112.78	127.40
3.	Peter Hallbom	49.95	56.34
4.	G. A. Stark	144.09	162.88
5.	Peter Hallbom	259.16	292.96
6.	Peter Hallbom	856.15	967.86
7.	Peter Hallbom	10.00	11.31
8.	Peter Hallbom	38.50	43.46
9.	Johnson & Larson Lumber Company	198.30	224.14
10.	Strong Motor Company	39.64	44.73
11.	Holm Brothers	472.97	534.57
12.	Farmers State Bank of New London	452.71	511.70
	Total amount of claims to be paid and settled		$3,791.38

NOTE.—The above claims have not been paid by the administrator by reason of the fact that parties have appeared in open court and personally objected to payment of claims from funds derived from U. S. War Veterans' Insurance and your representative desired to withhold such payment until said question has been settled.

Recapitulation

Total receipts from all sources	$10,110.40	
Total disbursements and credits as [fol. 4] follows:		
2. Expenses of administration		$410.62
3. Expenses of last sickness		556.55
4. Funeral expenses		265.00
6. Claims of creditors		3,791.38
8. Residue of personal property for distribution		5,086.94
Total	$10,110.49	$10,110.49

Fourth. That there is also belonging to said estate for distribution certain real estate as follows:

The homestead of said decedent, in the county of —— state of Minnesota, described as follows: ——.

All lands described in inventory were lost through foreclosures.

Fourth-A. Personal property for distribution consists of the following items: Cash in lawful money of the United States, $5,086.94.

Fifth. That said decedent died on the 20th day of October, 1925, intestate, and left him surviving his parents, Peter J. Hallbom and Selma Hallbom, the said Peter J. Hallbom being now deceased, who are all the heirs at law of said decedent, and the persons entitled to the residue of said estate.

Wherefore, your petitioner prays the order of this court fixing a time and place for the hearing of this petition and an examination of his final account, and the settlement and allowance of the same; and that upon said hearing [fol. 5] the court issue its final decree assigning the residue of said estate to the persons thereunto entitled.

Dated July 21st, 1928.

Edward A. Pagel, Petitioner.

Duly sworn to by Edward A. Pagel. Jurat omitted in printing.

[fol. 6] IN PROBATE COURT OF KANDIYOHI COUNTY

[Title omitted]

ORDER ALLOWING FINAL ACCOUNT

The above entitled matter came on to be heard on the 23rd day of July, 1928, upon the petition of the representative of the above named estate praying for the allowance of his final account and for distribution of the residue of said estate.

The said representative appeared in person and by his attorney, Chas. A. Swenson, Esq.

The court after due consideration of said petition, the evidence adduced in support thereof, and the files and records in said matter, finds the following facts:

First. That due notice of said hearing of said petition has been given as required by law by the publication of the citation of this court, for said hearing, dated the 23rd day of March, 1928, in the Atwater Republican Press, and by mailed notice as provided by the rules of this court.

Second. That the said final account set forth in said petition has been examined, adjusted and settled by the court, and as so adjusted and settled, is hereby found to be cor-
[fol. 7] rect; a summary statement of which account is as follows, to-wit:

Receipts

Personal estate as described in the inventory	$994.49
Received World War Veterans' Insurance from U. S. Veterans' Bureau, June 25, 1928	9,116.00
Total receipts from all sources	$10,110.49

Disbursements and Credits

Expenses of administration	$410.62
Expenses of last sickness	556.55
Funeral expenses	265.00
Claims of creditors of decedent	3,791.38
Residue on hand for distribution	5,086.94
Total credits	$10,110.49

Third. That all taxes, including personal property taxes, assessed against said estate, have been paid so far as there were funds of said estate to pay the same.

Fourth. As a conclusion from the foregoing facts, it is hereby ordered, that said account, as adjusted by the court, be, and the same hereby is, settled and allowed as and for the final account of said representative of said estate.

Dated July 23rd, 1928.
By the Court:

E. L. Rodegeb, Probate Judge. (Seal.)

[fol. 8] In Probate Court of Kandiyohi County

[Title omitted]

Notice of Appeal to District Court

Notice is hereby given, that Selma Hallbom, being aggrieved by the order of the Honorable E. L. Rodegeb, of the Probate Court of the county of Kandiyohi, Minnesota, made on the 23rd day of July, A. D. 1928, allowing the final account of the representative of the estate of said Jacob E. Hallbom, hereby appeals therefrom to the District Court of the Twelfth Judicial District, in and for said county of Kandiyohi.

Dated the 17th day of August, A. D. 1928.

L. J. Van Fossen and Orin M. Oulman, Attorneys for Appellant.

To Chas. A. Swenson, Esq., attorney for representative of said estate.

[fol. 9] In District Court of Kandiyohi County, 12th Judicial District

In re Estate of Jacob E. Hallbom, Decedent

Selma Hallbom, Respondent,

vs.

Edward A. Pagel, Administrator, Appellant

Proposed Case

A case containing all the evidence including all exhibits offered or introduced on the trial of this cause and all objections, rulings, orders, and other proceedings at the trial,

The cause came on for trial before the Honorable Harold Baker, one of the judges of this court, without a jury, on the 23rd day of October, 1928, being an appeal from the Probate Court of Kandiyohi county, Minnesota, by Selma Hallbom through her guardian, Clara M. Hallbom, to this court from the order of said Probate Court allowing the final account of Edward A. Pagel, administrator of the estate of Jacob E. Hallbom, decedent.

Orin M. Oulman appeared as attorney for Selma Hallbom, appellant, and Chas. A. Swenson appeared at attorney for the administrator of the estate of Jacob E. Hallbom, [fol. 10] decedent. Whereupon, on said date, the following proceedings were had:

A jury was waived by all parties and the case was submitted to the court on the following stipulated facts, the return of the Probate Court, and the following exhibits which were introduced and admitted in evidence.

AGREEMENT AS TO THE FACTS INVOLVED

This is an appeal by Selma Hallbom, through her guardian, Clara M. Hallbom, to the District Court of Kandiyohi county, from the order of the Probate Court of said county allowing the final account of the administrator of the estate of Jacob E. Hallbom, also known as Jacob Enoch Hallbom, decedent, dated the 23rd day of July, 1928.

There were claims of creditors filed against said estate in the amount of $3,354.32, which were allowed by the said Probate Court as valid claims against said estate on the 22nd day of June, 1926.

The administrator in his final account showed disbursements in payment of claims of creditors of said decedent in the amount of $3,791.38, which represents the said claims of creditors, plus interest, and made his final account for the purpose of having said Probate Court make its order thereon and to set running the time in which parties interested might appeal from said order allowing said final account.

[fol. 11] In the final account is found the following statement relative to the alleged payment of said claims of creditors:

"The claims have not been paid by the administrator by reason of the fact that parties have appeared in open court and personally objected to payment of claims from funds derived from U. S. War Veterans Insurance and your representative desired to withhold such payment until said question has been settled."

The administrator's final account showed that he had received from the World War Veterans Bureau war risk life insurance upon the life of said decedent in the amount of $9,116.00.

The account of the administrator was thus filed in Probate Court for the purpose of having same become final and binding upon all parties unless appealed from within thirty days, and notice of said final order allowing said final account was served upon all interested parties.

Jacob E. Hallbom was a soldier in the United States Army in 1917 in France and while in such service he took out a policy of war risk life insurance in the sum of $10,000.00, payable in case of his death to his father, Peter J. Hallbom.

On the 20th day of October, 1925, said Jacob E. Hallbom died and was at that time a resident of Kandiyohi county, Minnesota.

Thereafter his father, Peter J. Hallbom, was awarded the insurance, payable in 240 monthly payments, and the War Veterans Bureau continued thereafter to make said [fol. 12] monthly payments to him until his death, which occurred on the 22nd day of February, 1928.

At the time of Jacob E. Hallbom's death, his father, Peter J. Hallbom, and his mother, Selma Hallbom, were living.

Peter J. Hallbom, the father, was survived by his wife, Selma Hallbom, in whose behalf this appeal is taken, and he was also survived by several children.

Before paying the remainder of said insurance the United States Veterans Bureau required the appointment of an administrator of the estate of Jacob E. Hallbom and a submission to the bureau of certified copies of letters of administration and certified copies of other instruments of record in the Probate Court, which were duly submitted as theretofore an administrator of said estate had been appointed.

Upon due proof of the above having been presented to said bureau it paid to Edward Pagel, administrator of the estate of Jacob E. Hallbom, the sum of $9,116.00, the manner of such payment being check on the treasurer of the United States, which check is still held by the said administrator.

The said Selma Hallbom is the mother and an heir-at-law of said Jacob E. Hallbom and appeals from the order of the said Probate Court subjecting the said insurance fund at $9,116.00 to the payment of claims of creditors of said Jacob E. Hallbom.

[fol. 13] The application of Jacob E. Hallbom for war risk insurance contains the following:

"In case any beneficiary die or become disqualified after becoming entitled to an installment but before receiving all installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will as would under the laws of my place of residence, be entitled to my personal property in case of intestacy."

The certificate issued to the said Jacob E. Hallbom by the Bureau of War Risk Insurance is as follows:

"The United States of America, Treasury Department,
Bureau of War Risk Insurance, Washington, D. C.

Certificate No. 116,516

Date insurance effective: Nov. 1, 1917.

This Certifies That Jacob Enoch Hallbom has applied for insurance in the amount of $10,000, payable in case of death or total permanent disability in monthly installments of $57.50.

Subject to the payment of the premiums required, this insurance is granted under the authority of an Act amending 'An Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September 2, 1914, and for other purposes,' approved October 6, 1917, and subject in all re-
[fol. 14] spects to the provisions of such act, of any amend-

ments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.

W. G. McAdoo, Secretary of the Treasury. William C. DeLanoy, Director of the Bureau of War Risk Insurance.

Countersigned at Washington, D. C. S. Robbin, Registrar."

On the back of said certificate under the heading, "Important Notice," is found the following:

"The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable and is not subject to the claims of the creditors of the insured or of the beneficiaries.

"Should a claim arise under this certificate you are requested to write direct to the Bureau of War Risk Insurance, Treasury Department, Washington, D. C., in order to secure a prompt settlement. There will be no expenses in connection with proving a claim and collecting the amount due, other than small fees to notaries. It will not be necessary to consult or employ an attorney, claim agent, or other person to secure benefits under this certificate."

It is stipulated that the foregoing and the return of the Probate Court and any exhibits which may be introduced [fol. 15] are to be considered as the agreed statement of facts in this appeal.

Dated October 23rd, 1928.

(Signed) Chas. A. Swenson, Attorney for Estate of Jacob E. Hallbom. (Signed) Orin M. Oulman, Attorney for Appellant.

STATEMENT RE PLAINTIFF'S EXHIBIT "A"

NOTE.—Plaintiff's Exhibit "A" is set out verbatim in the stipulation and agreement as to the facts.

PLAINTIFF'S EXHIBIT "B"

Washington, D. C., June 22, 1928.

1; 380, 398.
United States Veterans Bureau. 1.
Treasurer of the United States. 15-51.
Pay in dollars ninety-one hundred sixteen, $9,116.00, to the order of Edward Pagel, admr. of est. of Jacob E. Hallbom, Atwater, Minn.
20-1-229121.
XC-1239301.
Object for which drawn: Mil. & Nav. Insurance.
Wm. H. Holmes, Disbursing Clerk, by E. Murray, Deputy Disbursing Clerk. 11-006.

[fol. 16] IN DISTRICT COURT OF KANDIYOHI COUNTY

STIPULATION FOR SETTLING CASE

It is hereby stipulated between the plaintiff and the defendant that the foregoing proposed case consisting of five pages of typewritten matter, and Plaintiff's Exhibits "A" and "B," together with the return of the Probate Court, may be taken as conformable to the truth and as containing all the evidence offered or introduced at the trial of said cause, and all objections, rulings, orders, and all other proceedings of said trial, and that the same may be settled and allowed as the settled case herein by the Honorable Harold Baker, judge, without further notice.

Orin M. Oulman, Attorney for Plaintiff Selma Hallbom. Chas. A. Swenson, Attorney for the Estate of Jacob E. Hallbom, Decedent, and Edward A. Pagel, Administrator.

IN DISTRICT COURT OF KANDIYOHI COUNTY

ORDER SETTLING CASE

I hereby certify that I have examined the foregoing settled case, consisting of five typewritten pages and Plain-

tiff's Exhibts "A" and "B," and have found the same to contain all the evidence produced on the trial of the above action, and all offers of evidence, rulings thereon, exceptions taken and all other proceedings had or taken on the trial of said cause, and that the same is in all respects conformable to the truth, and the same is hereby settled and [fol. 17] signed, as and for the settled case in this action.

Dated August 29, 1929.

Harold Baker, District Judge.

IN DISTRICT COURT OF KANDIYOHI COUNTY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an appeal by Selma Hallbom, through her guardian, Clara M. Hallbom, to this court from the order of the Probate Court of Kandiyohi county, allowing the final account of the administrator of the estate of Jacob E. Hallbom, decedent, dated the 23rd day of July, 1928. The same being regularly upon the general term calendar of this court, came on for trial on the 23rd day of October, 1928, before the undersigned, one of the judges of said court, and was submitted on an agreed statement of facts.

Orin M. Oulman appeared for the appellant and Charles A. Swenson appeared for the administrator and estate of Jacob E. Hallbom.

After having heard the evidence and arguments of counsel the court makes the following:

Findings of Fact

1. That Jacob E. Hallbom, also known as Jacob Enoch Hallbom, was in 1917 a soldier in the United States army in France and while in such service he took out a policy of War Risk Life Insurance in the sum of $10,000.00, payable in case of his death to his father, Peter J. Hallbom.

[fol. 18] 2. That this application for such insurance contained the following:

"In case any beneficiary die or become disqualified after becoming entitled to an installment but before receiving all

installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will, as would under the laws of my place of residence be entitled to my personal property in case of intestacy."

3. That the certificate issued to him, the said Jacob E. Hallbom, by the Bureau of War Risk Insurance is as follows:

"The United States of America, Treasury Department, Bureau of War Risk Insurance, Washington, D. C.

Certificate No. 116,516

Date insurance effective: Nov. 1, 1917.

This Certifies That Jacob Enock Hallbom has applied for insurance in the amount of $10,000, payable in case of death or total permanent disability in monthly installments of $57.50.

Subject to the payment of the premiums required, this insurance is granted under the authority of an Act amending 'An Act entitled "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September 2, 1914, and for other purposes,' approved October 6, 1917, and subject in all respects to the provisions of such Act, of any amendments [fol. 19] thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.

W. G. McAdoo, Secretary of the Treasury. William C. DeLanoy, Director of the Bureau of War Risk Insurance.

Countersigned at Washington, D. C. S. Robbin, Registrar."

4. That on the back of said certificate under the heading "Important Notice" is the following:

"The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable

and is not subject to the claims of the creditors of the insured or of the beneficiaries."

5. That on the 20th day of October, 1925, said Jacob E. Hallbom died and was at that time a resident of Kandiyohi county, Minnesota, and left surviving him his father, Peter J. Hallbom, and his mother, Selma Hallbom, and at the time of his death his father, Peter J. Hallbom, was still the designated beneficiary in said certificate of insurance.

6. That after the death of said Jacob E. Hallbom, his father, Peter J. Hallbom, was awarded the insurance, payable in two hundred forty monthly payments, and the War Veterans Bureau continued thereafter to make said monthly [fol. 20] payments to him until his death, which occurred on the 22nd day of February, 1928.

7. That Peter J. Hallbom was survived by his wife, Selma Hallbom, and several children, who were brothers and sisters of the said Jacob E. Hallbom.

8. That upon the death of the said beneficiary Peter J. Hallbom, steps were taken to probate the estate of said Jacob E. Hallbom, and one Edward Pagel was appointed administrator thereof and upon due proof of his appointment as such administrator having been presented to the Bureau of War Risk Insurance it paid to him, as such administrator, the sum of $9,116.00, which was the amount at that time still owing on said certificate of insurance, the manner of such payment being a check on the treasurer of the United States, which check is still held by said administrator.

9. That the said Probate Court of Kandiyohi county made its order allowing the final account of the administrator of the estate of said Jacob E. Hallbom and subjecting the said insurance fund of $9,116.00 to the payment of claims of creditors of said Jacob E. Hallbom.

Conclusions of Law

That the insurance fund in question is held by the administrator of the estate of Jacob E. Hallbom as a mere trustee for the purpose of passing it on to those entitled

thereto, who take same as beneficiaries under the said contract of insurance.

That the insurance money in question is not subject to the claims of creditors of the insured, Jacob E. Hallbom, or of any of the ultimate beneficiaries.

[fol. 21] That the Probate Court of Kandiyohi county should ascertain the parties to whom this insurance fund should be paid and the proportion thereof and thereupon the administrator of the estate of Jacob E. Hallbom should pay to such persons the proportionate share of said insurance fund as determined by the said Probate Court.

That the appellant, Selma Hallbom, is entitled to the judgment of this court, reversing the order of the said Probate Court as heretofore entered, allowing the final account of the administrator of said estate, and remanding the case to the said Probate Court for further proceedings in accordance with these conclusions of law and with the judgment to be entered herein.

Let judgment be entered accordingly.

Dated this 1st day of February, 1929.

By the Court:

Harold Baker, Judge.

Respondent is granted a 30 day stay.

IN DISTRICT COURT OF KANDIYOHI COUNTY

MEMORANDUM

In order to determine the question arising in this appeal it is necessary to look to the provisions contained in the War Risk Insurance Act, which was a war measure passed in the exercise of a power, to which all other rights and powers are subservient.

Furthermore the Constitution of the United States provides that:

"This Constitution, and the laws of the United States [fol. 22] which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding" (Par. 2, Art. 4).

The primary object of Congress in creating War Risk Insurance should be kept in mind. In the Act of Oct. 6, 1917, c. 105, sec. 2, 40 Stats. 409, Barnes Fed. C. 10306, the purpose is stated to be "to give every commissioned officer and enlisted man when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents without medical examination."

The very certificate of insurance which was issued and delivered to Jacob E. Hallbom stated thereon that such insurance was "not subject to the claims of the creditors of the insured or of the beneficiaries" and without doubt he went to his grave firm in the belief that this insurance would be paid to his next of kin without first being subjected to the claims of his creditors or of the irs.

Said Act also provided at the time he was granted his certificate of insurance, and still provides that any insurance paid under and by virtue of such certificate of insurance "shall not be subject to the claims of creditors of any person to whom an award is made * * * and shall be exempt from all taxation" (See 38 U. S. C. A., Section 454).

Previous to March 4th, 1925, if a designated beneficiary survived the insured but died before receiving all of the [fol. 23] installments, then the remaining installments were paid by the War Risk Insurance Bureau to "such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy." See regulations of the War Risk Insurance Bureau, Bulletin 1, issued Oct. 15, 1917, p. 4.

By Act of Congress of March 4th, 1925, the statute relative to said War Risk Insurance was amended to read as follows:

"If no person within the permitted class be designated as beneficiary * * * by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable. * * *

When any person to whom such insurance was awarded prior to such date dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of insurance so awarded to such person."

Act June 7, 1924, c. 320, Sec. 303.
43 Stats. 625, March 4, 1925, c. 553, Sec. 14, 43 Stats. 1310, Barnes Fed. C. (1926 Cum. Supp.) 10438, 38 U. S. C. A., Sec. 514.

[fol. 24] After the passage of the above amendment the War Risk Insurance Bureau, in cases wherein the designated beneficiary survived the insured but died before receiving all of the installments, paid the remaining installments to the administrator of the estate of the insured.

The above procedure applies to unconverted insurance, which is the kind of insurance involved in the instant case.

It is quite evident that the government in making payments to beneficiaries named in the certificates of War Risk Insurance found great difficulty in ascertaining the beneficiaries as such beneficiaries had to be ascertained and determined from time to time according to the laws of the forty-eight states and it is but reasonable to conclude that to obviate this difficulty the government caused to be enacted the statute hereinbefore mentioned on March 4th, 1925.

Several courts in other jurisdictions have held in effect that it was but reasonable to assume that the government, by the amendment of March 4th, 1925, did not intend to do violence to the substantial terms of the contract of insurance but did intend to obviate the difficulty of ascertaining and making payments to beneficiaries, and for that purpose directed that the money still owing on the contract of insurance should be paid to the estate of the soldier—that is, to the legal representative thereof—and that said representative should pay and distribute said money among the beneficiaries, who are entitled thereto under the terms of [fol. 25] the contract of insurance.

It is, therefore, plainly apparent from the laws relative to this insurance that it was never the intention of Congress to vest any of this insurance in the estate of the insured so

as to subject it to the payment of the claims of his creditors or of the creditors of his beneficiaries.

The Supreme Court of Alabama (110 So. 403) in passing upon a question similar to that involved in the instant case aptly said that "an analogy is presented under our law in case of damages awarded to an administrator in actions for death by wrongful act. He is a mere trustee or conduit to receive and pass on the funds to those entitled, free from the debts of the decedent."

It also appears that it has been the general policy of the government in passing legislation pertaining to pensions, bounties, bonuses, veterans' relief and insurance during and since Civil War days and down through World War legislation to provide for and to make such payments to the soldier or to his dependents or to his beneficiaries free from the claims of creditors.

Taking into consideration the history of this legislation and the laws now in force relative to this insurance and the contract of insurance which, as the certificate states, is composed of the application for the insurance, the law then in force, or any amendments thereto, and all regulations of the War Risk Insurance Bureau thereunder, it seems but reasonable and just to hold that the administrator holds the insurance fund involved in the instant case as a mere trus-[fol. 26] tee for the purpose of delivering same into the hands of the ultimate beneficiaries in such proportion as the Probate Court shall determine, being guided thereby by the intestate laws of this state applicable to the descent of personal property.

Harold Baker.

IN DISTRICT COURT OF KANDIYOHI COUNTY

JUDGMENT

The above entitled action came on for trial before the above named court on the 23rd day of October, 1928, and the court, after hearing the evidence adduced at said trial and being fully advised in the premises, did, on the 1st day of February, 1929, make its findings and order for judgment herein, and same were filed on the 5th day of February, 1929.

Now pursuant to said order and on motion of L. J. Van Fossen and Orin M. Oulman, attorneys for Selma Hallbom, appellant, it is hereby adjudged in favor of appellant that the order of the Probate Court of the county of Kandiyohi, Minnesota, allowing the final account of the administrator of the estate of said Jacob E. Hallbom herein appealed from, be and is hereby reversed and said cause remanded to the Probate Court for further proceedings in accordance with the conclusions of law and judgment herein.

By the Court:

Ed Sanderson, Clerk of District Court.

[fol. 27] In District Court of Kandiyohi County

Notice of Appeal

To L. J. Van Fossen and Orin M. Oulman, attorneys for the above-named respondent, and to Ed Sanderson, clerk of said District Court:

Please take notice, that the administrator of the estate of Jacob E. Hallbom, the above named decedent, appeals to the Supreme Court of the state of Minnesota, from the judgment of the said District Court entered herein on the 6th day of July, A. D. 1929, reversing the order of the Probate Court of the county of Kandiyohi and state of Minnesota, made on the 23rd day of July, 1928, allowing the final account of the representative of the above named estate, and from the whole thereof.

Dated this 10th day of August, A. D. 1929.

Chas. A. Swenson, Atwater, Minnesota, Attorney for Edward A. Pagel, Administrator of the Estate of Jacob E. Hallbom, Decedent.

[fol. 28] IN SUPREME COURT OF MINNESOTA

Wilson, C. J.

No. 22. 27721

In re Estate of Jacob E. Hallbom, Decedent

SELMA HALLBOM, Respondent,

vs.

EDWARD A. PAGEL, Administrator, Appellant

Syllabus

1. Rules and regulations prescribed by a department of government in pursuance of statutory authority have the force of law.

2. Proceeds of war risk insurance policy held payable after death of beneficiary to estate of insured for distribution to such persons then living who are within the permitted class of beneficiaries described in the act, as would be entitled to insured's personal property under state laws in case of intestacy; and that such persons take as beneficiaries and not as heirs at law.

3. The determination of the parties who are to receive such money is not in the first instance exclusively for the probate court but may be determined by the district court when the question arises therein.

Affirmed with directions.

OPINION—Filed Feb. 21, 1930

Jacob E. Hallbom was a soldier in our army in the world war. While in foreign service he took out a policy of war risk life insurance in the sum of $10,000.00 naming his father, Peter J. Hallbom, as beneficiary. The insured died October 20, 1925. The father, and his wife, Selma Hallbom, the mother, survived. The insurance was awarded to the father payable in 240 monthly payments, and the War Veterans Bureau continually made these payments until the father's death on February 22, 1928. The father

was survived by his said wife and several children who were brothers and sisters of the insured. Edward Pagel [fol. 29] was then appointed administrator of the soldier's estate and as such he was paid $9,116.00, the commuted amount of the policy.

The insured left creditors whose claims were allowed against his estate in the sum of $3,791.38. The assets of the estate, excluding the $9,116.00, were insufficient to pay the expense of administration and the creditors. The administrator realizing that interested parties were opposed to the insurance money being used for such purposes filed for approval a final account, in which he proposed to so use such money. The probate court approved the account. Selma Hallbom appealed to district court and that court held that (1) the administrator was only a trustee of the funds, (2) the money was not subject to the claims of creditors, (3) that probate court should ascertain to whom the money was to be paid, and (4) that the order of the probate court allowing the final account was reversed. Judgment was entered. The administrator has appealed from such judgment.

The act of October 6, 1917 provides for insurance "in order to give to every commissioned officer and enlisted man * * * greater protection for themselves and their dependents." 40 Stat. 409, Chap. 105, § 400. This purpose is reaffirmed in the act of June 7, 1924, 43 Stat. Chap. 320, § 300. 38 U. S. C. A. 245, § 511. It was restated in the act of March 4, 1925, 43 Stat. 1308, § 12.

The act of June 7, 1924, provides that the insurance shall not be subject to the claims of creditors of any persons to whom an award is made; and shall be exempt from taxation. 43 Stat. 613, § 22, 38 U. S. C. A. 217, § 454.

The policy issued in this case contained an endorsement "Important Notice," under which it was stated:

"This insurance * * * is not subject to the claims of creditors of the insured or of the beneficiary."

The statute authorizes the department to make rules and regulations to carry out the purposes of the law. This was done. They provided that:

"If no beneficiary within the permitted class be designated by the insured * * * or if any above designated

beneficiary * * * does not survive the insured the insurance (or if any above designated beneficiary shall sur-
[fol. 30] vive the insured, but shall not receive all the installments then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy." Bulletin 1, p. 4, issued October 15, 1917.

The application for insurance, which is made a part of his contract of insurance, provides:

"In case any beneficiary die or become disqualified after becoming entitled to an installment, but before receiving all installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will, as would under the laws of my place of residence be entitled to my personal property in case of intestacy."

The insurance is payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them. 38 U. S. C. A. 245, § 511.

"If no person within the permitted class be designated as beneficiary * * * by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable * * *.

"When any person to whom such insurance was awarded prior to such date dies or forfeits his rights to such insurance, then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of insurance so awarded to such person." 38 U. S. C. A. 252, § 514.

The foregoing provision is by the statute made effective as of October 6, 1917.

We thus come to the point where the money became payable to "the estate of the insured." That has been done. The administrator has received the money. Is it an asset of the estate for use as such or is it property belonging to certain beneficiaries and merely held by the administrator in trust?

1. The rules and regulations prescribed by a department of government in pursuance of statutory authority have the force of law. Cassarello v. U. S., 271 Fed. 486.

[fol. 31] 2. If the insurance in such a case as this is to become a part of the estate and as such go to the heirs at law it will frequently go to persons outside "the permitted class." It would also be liable for the payment of debts though the act specifically provides otherwise. This insurance was never provided for the benefit of creditors. It was expressly designed for the service man and his next of kin dependents. Having in mind the repeatedly expressed and obvious purpose of the act, we are of the opinion that reason and principle require us to hold, as we do, that the payment of the funds to the estate of the insured is merely a matter of procedure and the representative of the estate is to distribute it only to persons included "within the permitted class." The persons who would receive the money receive it as beneficiaries under the policy and not as heirs at law. Cassarello v. U. S., 271 Fed. 486; in re Cross Estate, 278 P. 414; Wilson v. Sawyer, 6 S. W. (2nd) 825, Perrydore v. Hester, 110 So. 403; Tax Commission of Ohio v. Rife, 162 N. E. 390; in re Wanzel's Estate, 145 A. 512; Watkins v. Hall, 147 S. E. 876; Payne v. Jordan, 110 S. E. 4, 138 S. E. 262; Sutton's Executor v. Barr's Administrator, 293 S. W. 1075. There are cases to the contrary. Whaley v. Jones, 149 S. E. 841 and cases therein cited. Hugus v. U. S., 24 Fed. (2nd) 247. In re Greiner's Estate, 218 N. W. 437; Condon v. Mallan, 30 Fed. (2nd) 995; Branch Banking and Trust Co. v. Brinkley, 144 S. E. 530; National Union Bank v. McNeal, 145 S. E. 549. In re Hester case:

"An analogy is presented under our law in case of damages awarded to an administrator in actions for death by wrongful act. He is a mere trustee or conduit to receive

and pass on the funds to those entitled, free from the debts of the decedent."

It is also analagous to our statutory provision that all moneys payable to a wife or child from insurance upon the life of a deceased husband or father, not exceeding $10,000.00, are exempt. G. S. 1923, § 9447, sub. 14. Doubtless the government can handle the matter more expeditiously [fol. 32] by paying the money to the representative of the estate who will distribute it under the supervision of the local courts rather than to undertake the determination of the existing and particular beneficiaries "within the permitted class." Such insurance contains a contractual relation and the terms of the agreement dictate the same conclusion. In re Sabin's Estate, 227 N. Y. Sup. 120.

Such insurance in a measure was adopted as a substitute for unsatisfactory pension legislation for the benefit of those named. It was furnished at less than cost to a particular class. In the instant case the service man's father, who received payments for a few months, did not inherit the insurance. He received those payments by virtue of his seniority and the absence of others in "the permitted class." Upon his death his name automatically dropped from the roll of "the permitted class" and the next name thereon is the mother. Such insurance money is to be distributed to those living at the time of the distribution who come within "the permitted class" in the order of their priority under the laws of the descent of personal property in this state.

3. The question of determining the descent of this money under the state law is not the primary question to be decided. It is necessary in such a case to determine what person or persons within "the permitted class" would be entitled to the insured's personal property in case of intestacy. There is no more reason for directing the probate court to determine that question than for the district court to call upon the probate court to determine who the heirs are that are to receive the money in cases of death by wrongful act. This may be done by the district court. Indeed, in this case the stipulation showed that Selma Hallbom was the only person who under our view of the law is to receive the money. To the extent that the judgment

determines that this money goes to the beneficiary and not to the heirs at law and that it is not subject to the claim of creditors it is affirmed. The cause is remanded with directions to the trial court to modify the order for judg-
[fol. 33] ment and the judgment in accordance with the views herein expressed, thereby eliminating the necessity for the probate court to make any further determination.

Affirmed with directions.

Wilson, C. J.

[File endorsement omitted.]

[fol. 34] IN SUPREME COURT OF MINNESOTA

27721

In re Estate of Jacob E. Hallbom, Decedent

SELMA HALLBOM, Respondent,

vs.

EDWARD A. PAGEL, Administrator, Appellant

JUDGMENT—Filed March 4, 1930

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Kandiyohi be and the same hereby is in all things affirmed, with directions,

Dated and signed March 4th, A. D. 1930.

By the Court.

Attest:

Grace Kaercher Davis, Clerk of Supreme Court Minn. (Supreme Court Seal.)

[File endorsement omitted.]

[fol. 35] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 30, 1930

To the Clerk of the Minnesota Supreme Court:

You are hereby requested to make a transcript of the record of this cause to be used in an application to the

Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of:

The Record on Appeal in said cause;

The opinion of the Supreme Court of the State of Minnesota;

All journal entries contained in the records and proceedings of the Supreme Court of the State of Minnesota, relating to said cause;

The final judgment and decision of the Supreme Court of the State of Minnesota;

Your certificate to the record that it is a complete record in said cause.

Chas. A. Swenson, Attorney for Appellant, Atwater, Minnesota.

Dated April 25, 1930.

[File endorsement omitted.]

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

PETITION FOR A WRIT OF CERTIORARI

FILE COPY

Office Supreme Court
FILED
JUN 3 19
CHARLES ELMORE C
CL

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 176

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

SELMA HALLBOM.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA AND BRIEF IN SUPPORT THEREOF.

HENRY T. RONNING,
Counsel for Petitioner,
Willmar, Minnesota.
CHAS. A. SWENSON,
Atwater, Minnesota,
Of Counsel.

(35,098)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 176

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

SELMA HALLBOM.

PETITION FOR WRIT OR CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Edward A. Pagel, as administrator of the estate of Jacob E. Hallbom, decedent, respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

This case involves the distribution of the sum of nine thousand one hundred sixteen ($9,116.00) dollars, paid by the United States Veterans' Bureau to the

estate of Jacob E. Hallbom, decedent, of which estate your petitioner is the administrator, and which sum represented the commuted value of unpaid installments of War Risk Insurance.

Your petitioner asks for a review of the decision of the Supreme Court of the State of Minnesota holding, in effect, that said sum did not become a part of the estate the same as other assets; that those entitled to said sum take the same as beneficiaries and not as heirs-at-law; that payment of said sum to the estate of the insured is merely a matter of procedure; that the same is not subject to the payment of claims filed against the estate of the deceased insured; and that the same is to be distributed to those living at the time of distribution who come within "the permitted class" in the order of their priority under the laws of descent of personal property in the State of Minnesota.

The facts were stipulated in the District Court (R. 6), and upon such stipulation, the return of the Probate Court which included the amended final account and petition for settlement by the administrator (R. 1), and the order of the Probate Court allowing the final account (R. 4), and upon plaintiff's Exhibit "A" (R. 9) and (R. 8) and plaintiff's Exhibit "B" (R. 10), the District Court made its findings of fact and conclusions of law (R. 11) and ordered judgment of reversal as aforesaid, which judgment was sustained by the Minnesota Supreme Court (R. 24 and R. 19).

Concisely stated, the facts are as follows:

One Jacob E. Hallbom, also known as Jacob Enock Hallbom, in the year 1917, was a soldier in the United States Army in France, and while in such service he

applied for and was granted a Government War Risk Insurance certificate in the sum of ten thousand ($10,000.00) dollars, payable, in case of death, to his father, Peter J. Hallbom, which certificate is set out *verbatim* in the record, as Plaintiff's Exhibit "A" (R. 8).

On the 20th day of October, 1925, the said Jacob E. Hallbom died, being then a resident of Kandiyohi County, Minnesota, and left surviving him his father, Peter J. Hallbom, and his mother, Selma Hallbom. At the time of the death of Jacob E. Hallbom, his father, Peter J. Hallbom, was still the designated beneficiary in said certificate of insurance.

After the death of said Jacob E. Hallbom, the beneficiary, Peter J. Hallbom, was awarded the insurance, payable in two hundred and forty (240) monthly installments, and the War Veterans' Bureau continued thereafter to make said monthly payments to him until his death, which occurred on the 22nd day of February, 1928. Peter J. Hallbom left him surviving his wife, Selma Hallbom, the respondent herein, and several children.

Upon the death of the said beneficiary, Peter J. Hallbom, steps were taken to probate the estate of said Jacob E. Hallbom, and one Edward A. Pagel was appointed administrator thereof and upon due proof of his appointment as such administrator having been presented to the Bureau of War Risk Insurance, it paid to him, as such administrator, the sum of nine thousand one hundred sixteen ($9,116.00) dollars, which was the amount at that time still owing on said certificate of insurance, the manner of such payment

being a check on the treasurer of the United States, which check was dated June 22, 1928, and is set out *verbatim* in the record as Plaintiff's Exhibit "B" (R. 10).

On June 22, 1926, the Probate Court allowed claims against the estate of Jacob E. Hallbom which aggregated the sum of three thousand three hundred fifty-four and 32/100 ($3,354.32) dollars (R. 2).

The administrator in due course filed his final account with the Probate Court, which account is found in the record (R. 1) and shows that there were not sufficient other assets, besides the sum received from the Bureau of War Risk Insurance, with which to pay a part of the expenses of last sickness and no part of the claims, and that the administrator proposed to subject said sum to payment of balance of expenses of last sickness and all of the claims, in other words, to treat said fund the same as other assets of the estate. This account was allowed by the Probate Court by its order dated July 23, 1928, which order is also set out in the record (R. 4). Selma Hallbom, the widow of Peter J. Hallbom, appealed to the District Court (R. 5) from this order, where the same was reversed (R. 11), and judgment entered (R. 17).

Your petitioner, as administrator, then appealed from said judgment to the Supreme Court of the State of Minnesota (R. 18), which court upheld the District Court (R. 24).

B.

Reasons Relied on for the Allowance of the Writ.

(1) The Supreme Court of the State of Minnesota, in making the decision referred to, decided a Federal question of substance not theretofore determined by your Court.

(2) The said decision of the Supreme Court of the State of Minnesota involved a distribution of a sum paid by the United States Veterans' Bureau to the administrator of the estate of the deceased soldier as the commuted value of unpaid installments under a War Risk Insurance certificate after the death of the designated beneficiary under authority and by virtue of Section 9127½-303 U. S. Compiled Statutes, 1925, which provides as follows:

> "9127½-303. PAYMENT OF INSURANCE TO ESTATE OF DECEASED BENEFICIARY; ESCHEAT TO UNITED STATES.—If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award; *Provided*, That all awards of yearly renewable term in-

surance which are in course of payment on the date of the approval of this Act shall continue until the death of the person receiving such payments, or until he forfeits same under the provisions of this Act. When any person to whom such insurance is now awarded dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance so awarded to such person; *Provided, further,* That no award of yearly renewable term insurance which has been made to the estate of a last surviving beneficiary shall be affected by this amendment: *Provided, further,* That in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917 (June 7, 1924, c. 320, p. 303, 43 Stat. 625, amended March 4, 1925, c. 553, p. 14, 43 Stat. 1310)."

(3) Your petitioner respectfully contends:

(*a*) That the sum in question paid to this petitioner as administrator, under authority of the statutory provision set out in paragraph (2), became a part of the estate the same as other assets.

(*b*) That the ultimate recipients of said sum take the same as heirs-at-law, under state intestate laws, in the same proportion as they take other assets of the estate.

(*c*) That the ultimate recipients do not take said sum as beneficiaries limited to persons "within the permitted class."

(*d*) That said sum is subject to claims filed and allowed against said estate.

(*e*) That the heirs-at-law are determined as of the date of death of the insured veteran.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Minnesota, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 27721, *In re* ESTATE OF JACOB E. HALLBOM, Decedent; SELMA HALLBOM, Respondent, *vs.* EDWARD A. PAGEL, ADMINISTRATOR, Appellant, and that the said decree of the Supreme Court of the State of Minnesota may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

EDWARD A. PAGEL,
By HENRY T. RONNING,
Counsel for the Petitioner.
CHAS. A. SWENSON,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 176

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, PETITIONER,

vs.

SELMA HALLBOM.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The opinion in the Supreme Court of Minnesota is reported in Northwestern Reporter as *In re* Hallbom's Estate; Hallbom *v.* Pagel, 229 N. W. 344, decided by the Supreme Court of Minnesota February 21, 1930 (R. 19).

II.

Jurisdiction.

1. Your petitioner respectfully maintains that jurisdiction by this Court in this case is sustained by U. S.

Compiled Statutes, 1925 Supplement, Sec. 1214 (Judicial Code, Section 236, as amended by the Act of February 13, 1925, 43 Stats. 937).

2. The date of the judgment to be reviewed is March 4, 1930 (R. 24).

3. The nature of the case and of the rulings below were such as to bring the case within the jurisdictional provision relied on because it is one wherein a final judgment has been rendered by the Supreme Court of the State of Minnesota, which is the highest court of that State in which a decision could be had, and a right is set up and claimed by your petitioner under a statute of the United States, to wit, Section 9127½-303 U. S. Compiled Statutes, 1925, which is set out *verbatim* under heading "B" in the petition and, in the interest of brevity, the same is not repeated here. The right claimed is that the money in question is an asset of the estate for use as such and to be administered in accordance with the intestate laws of the State of Minnesota and the residue to be distributed to the heirs-at-law of the decedent to be determined as of the date of his death.

4. While the following cases are not in point so far as facts involved are concerned, your petitioner believes they sustain the jurisdiction:

Plowden Weston et al. plaintiffs in error *vs. The City Council of Charleston*, defendants, 2 Pet. 449, 7 L. Ed. 481: In this case it is held that "Final Judgment" applies to all judgments and decrees which determine the particular cause; it is not required that judgments shall finally decide upon the rights which are litigated.

Kentucky vs. Powers, 201 U. S. 1: In this case the court holds that a writ of error will lie to the highest court of a State entitled to pass upon the claim.

Miedreich vs. Lauenstein, 232 U. S. 236: In this case it is held that where a state court holds that a federal question is made before it, according to its practice, and proceeds to determine it, this Court will regard the question as duly made.

Green Bay & Mississippi Canal Company vs. Patten Paper Company, 172 U. S. 58: This case holds that an allegation that a claim is founded on certain acts of Congress is sufficient.

III.

Statement of the Case.

A full statement of the case has been given under heading "A" in the petition and, in the interest of brevity, the statement is not repeated at this point.

IV.

Specification of Errors.

1. The Supreme Court of Minnesota erred in finding and holding that the payment of the funds to the estate of the insured is merely a matter of procedure and the representative of the estate is to distribute it only to persons included "within the permitted class" (R. 22).

2. The Supreme Court of Minnesota erred in finding and holding that the persons who would receive the

money receive it as beneficiaries under the policy and not as heirs-at-law (R. 22).

3. The Supreme Court of Minnesota erred in finding and holding that it is also analogous to our (State of Minnesota) statutory provision that all moneys payable to a wife or child from insurance upon the life of a deceased husband or father, not exceeding $10,000.00, is exempt. G. S. 1923 No. 9447, Sub. 14 (R. 23).

4. The Supreme Court of Minnesota erred in finding and holding that "Such insurance money is to be distributed to those living at the time of the distribution who come within 'the permitted class' in the order of their priority under the laws of the descent of personal property in this State" (R. 23).

5. The Supreme Court of Minnesota erred in finding and holding that the question of determining the descent of this money under the State law is not the primary question to be decided (R. 23).

6. The Supreme Court of Minnesota erred in finding and holding that "It is necessary in such a case to determine what person, or persons, within 'the permitted class' would be entitled to the insured's personal property in case of intestacy" (R. 23).

7. The Supreme Court of Minnesota erred in finding and holding that the money is not subject to the claims of creditors (R. 24).

8. The Supreme Court of Minnesota erred in affirming the judgment of the district court below (R. 24).

V.

ARGUMENT.

Summary of the Argument.

Point A. The statute involved is clear and unambiguous and within the constitutional authority of Congress.

Point B. The decision below is contrary to and in conflict with prior Federal and State court decisions.

Point A.

The statute is clear and unambiguous and within the constitutional authority of Congress.

The United States Veterans' Bureau paid the fund in question to the administrator under authority and by virtue of Section 9127½-303 U. S. Compiled Statutes, 1925, which statute is set out *verbatim* under heading "B" in the petition and in the interest of brevity the same is not repeated here.

Your petitioner, as administrator, made his final account (R. 1) upon the theory that the fund in question became a part of the estate the same as other assets, and this theory was approved by the Probate Court (R. 4). The Probate Court was reversed by the District Court (R. 17) and the latter sustained by the Supreme Court of the State of Minnesota (R. 24).

The language of the statute in question and above cited is perfectly plain, certain, definite and unam-

biguous—the remainder of the fund is to be paid to the estate of the deceased. There can be but one intent of Congress deduced from this language, viz., that the remainder is to become a part of decedent's estate, the same as other assets, to be administered under the laws of the State of domicile of the decedent at the time of his death. Any other intent on the part of Congress must be read into the act by construction. Resort to construction may be had only when the language of an act is uncertain, indefinite and ambiguous.

In re Singer's Estate, 192 Wis. 524, 213 N. W. 479, a case where the act in question was under consideration, the court held:

> "The present worth of monthly installments payable after the death of the insured is, in the event the beneficiary shall die, to be paid 'to the estate of the insured', and in this case the government has paid the amount to the administrator of the estate of the insured. The only question then remaining to be determined is who are the distributees of the estate of the insured, and it is very vigorously argued that, having in mind the purpose of the insurance, that is, the general protection of the insured and his dependents, it should be held in this case, that the father, who is the only one who may be considered in any legal sense dependent, is entitled to receive the whole of the estate, because such was the intention of the Congress. The intention of the lawmaking power must be ascertained from the language used to express that intention, and it is only when the language used is uncertain, indefinite, or ambiguous that

resort may be had to construction. Here the language of the act is perfectly plain—the remainder of the fund is to be paid to the estate of the deceased. Hence there is no room for the application of rules of construction. The intent of the lawmaking power is that which is found clearly expressed in the language used in the act. Whether it be considered, as said in the White Case, supra, that the contract be a contract of insurance or a pension, or partakes somewhat of both, its disposition in the event of death is clearly indicated. Immediately upon the death of the insured the title to his estate vested in his heirs. Caldwell & Gates Co. *v.* Mennes, 190 Wis. 551, 209 N. W. 588."

The Supreme Court of Iowa in the case of *In re Pivonka's Estate,* 211 N. W. 247, in dealing with a similar state of facts as in the case at bar, in the course of its opinion said:

> "Congress undoubtedly had the power to have made disposition of the uncollected installments of War Risk Insurance, upon the death of the first named beneficiary. It did so by providing that, upon the death of said beneficiary, the unaccumulated installments should be paid to the estate of the deceased soldier. It would therefore be disposed of as assets of the estate of said decedent and as of the date of the death of said decedent."

The Supreme Court of the United States in the case of *White vs. United States,* 270 U. S. 175, 70 L. Ed. 530, decided March 1, 1926, passed upon the contract between the insured and the Government under War

Risk Insurance and held that under said contract no beneficiary or any particular class of beneficiaries, had any vested rights. In this case, George White, soldier, took out ten thousand ($10,000) dollars War Risk Insurance on July 1, 1918. Died October 4, 1918. Mother named beneficiary, but by a letter of the soldier, later established as his will, he provided one-half of that sum should be paid to his aunt. She was not within permitted class at time, but became so by Act of December 24, 1919. Installments paid to mother through January, 1921. Then suspended as to one-half, which was given to aunt. Action by mother for whole. The court said:

> "The certificate of insurance provided in terms that it should be 'subject in all respects to the provisions of such act (of 1917), of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the act, shall constitute the contract'. These words must be taken to embrace changes in the law no less than changes in the regulations. The form was established by the director with the approval of the secretary of the treasury and on the authority of Art. 1, paragraph 1, and Article IV, paragraph 402, of the act, which, we have no doubt, authorized it. The language is very broad and does not need precise discussion when the nature of the plan is remembered. The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for a gain.

All soldiers were given the right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldiers' good. It was a new experiment in which changes might be found necessary, or at least, as in this case, feasible more exactly to carry out his will. If the soldier was willing to put himself into the Government's hands to that extent no one else could complain. The only relations of contract were between the Government and him. White's mother's interest at his death was vested only so far as he and the Government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half. She is a volunteer and she cannot claim more."

In the case of *Hugus vs. United States*, 24 F. (2nd) 247 (Texas), decided February 24, 1928, an attempt was made to read into present statutes a construction from former statutes. This was an action brought by father of deceased soldier for one-half of insurance allotment which was paid by the Government to the mother, claiming that Congress intended in enacting 305 of World War Veterans Act of 1924, as amended July 2, 1926 (38 U. S. C. A., No. 516), "Dependent mother and father" instead of "Dependent mother or father" on two contentions.

(*a*) Prior legislation treated dependent parents in the same manner, and it is therefore to be presumed that Congress intended to con-

tinue such treatment;

(*b*) When both context and connection show that "and" should be used instead of "or" it will be substituted by the court.

The court refused to so construe the statutes and said:

> "The court is not a *cousor morum*. The court merely ascertains the intention of the lawmaker from the text, and, if the text is unambiguous there is no reason for construction."

In re Ogelvie's Estate, 139 Atl. 826, 291 Pa. 326, decided December 5, 1927. In this case the soldier died in August, 1918, carrying War Risk Insurance. The soldier's father, who was named beneficiary, died in September, 1920, and the soldier's mother died June 1925.

The soldier made a will wherein his fiancee was named sole legatee. Held: That the fiancee and sole legatee under the will of deceased soldier was entitled to proceeds of War Risk Insurance payable under soldier's estate after the death of beneficiary, although the fiancee was not within the permitted class.

In this case the court particularly discredits the logic in the *Sutton vs. Barr,* Kentucky case, 293 S. W. 1075.

Referring to the act of March 4, 1925, the court holds:

> "The latter act was a carefully drawn statute, its language is plain and the presumption is that Congress expressed what it intended. It is an elementary rule of statutory construction

that a change of language indicates a change of legislative intent; also that, where statutes conflict, the latter governs; hence, as the act of 1925 is inconsistent with prior statutes, it controls. The latter act being complete, we can not read into it the inconsistent language of prior legislation.''

O'Quain vs. U. S., 28 F. (2nd) 350 (D. C. Louisiana), decided July 26, 1928. Plaintiff sues to recover War Risk Insurance upon life of her illegitimate son, John C. Broussard. She was not named as beneficiary. Court holds:

''(6) I have not overlooked the provisions of Section 12 of the Act of March 4, 1925, 33 Stat., p. 1308 (Title 38, p. 511, U. S. C.), amending Section 300 of the War Veterans' Act of June 7, 1924, which read: 'The insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them and also during total and permanent disability to the injured person'. However, this section must be read in connection with Section 14 of the same act (43 Stat., p. 1310; title 38, p. 514, U. S. C.), which specifically provides that, 'If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured, either in his lifetime or by his last will and testament,' etc., the same shall be paid to his estate. The two provisions are easily reconcilable by holding that the first (Section 12) merely intended to name those classes eligible as beneficiaries, and not to give any of them

> the substantive right to claim the insurance without being named as such beneficiaries, except as the same may be accorded by the law of the state where the insured was domiciled at the time of his death.'

This case is affirmed in *O'Quain vs. U. S.*, 31 F. (2nd) 756.

McDaniel vs. Sloan (Supreme Court of Tennessee), 11 S. W. (2nd) 894, decided December 8, 1928.

Thomas L. Cole, a soldier in the World War, effected War Risk Insurance on his life, naming his father, James Cole, as beneficiary. Soldier later married and thereafter died, leaving Mamie Evans Cole as his widow. She later married. The beneficiary, after collecting several years' installments under the policy, died. Insurance paid to administrator of soldier's estate and held for distribution. Held widow entitled to insurance.

The court held:

> "Neither the policy nor the federal statutes are controlling, further than that the World War Veterans' Act of 1924 (38 U. S. C. A., p. 514) provides that, 'when any person to whom such insurance was awarded prior to such date, dies or forfeits his rights to such insurance then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments of the insurance.' This provision as we have seen, has been complied with.
>
> "Looking to the Tennessee statute governing the distribution of the estate of one who dies intestate, it is seen that Section 4172 of Shan-

non's Code, reads as follows: 'The personal estate as to which any person dies intestate, AFTER THE PAYMENT OF DEBTS AND CHARGES AGAINST THE ESTATE, shall be distributed as follows: * * * (2) to the widow altogether, if there are no children nor the descendants of children.' ''

The foregoing cases taken from decisions of the courts where the Act of March 4, 1925, has been passed upon, show that, not only did Congress have the power to pass the act in question, but Congress meant exactly what the language of the act imports, viz.: That upon the death of a designated beneficiary or beneficiaries, under War Risk Insurance, the unpaid remainder becomes a part of the estate of the insured the same as other personal property. The decisions cited also show that the Act is not subject to construction. However, if we trace the history of the Act of March 4, 1925, so far as the clause making the balance payable to the estate of the insured is concerned, it conclusively shows that Congress could have had no other intent.

Prior to the amendment, the act read as follows so far as we are concerned in this case:

> "If no person within the permitted class of beneficiaries survive the insured, or if before the completion of payments the beneficiary or beneficiaries shall die and there be no surviving person within said permitted class, then there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable under the provisions of this title."
>
> Act of June 7, 1924, C. 320, Sec. 303, 43 Stat. 625.

The last cited act was the first provision made by Congress for payment of a remainder of War Risk Insurance to the estate of the insured. It should be noted that the money was not paid to the estate unless "there be no surviving person within said permitted class." It can not well be contended that Congress intended, when the payment to the estate clause was originally enacted, that the administrator who received a remainder, received the same merely for the purpose of passing the same on to beneficiaries within the permitted class, because the act itself specifically prohibited the payment of any remainder to the estate of the insured so long as any person within the permitted class survived. The only inference as to the intent of Congress which can be drawn from the Act of June 7th, 1924, is that when no person remained who was within the class permitted to be designated as a beneficiary under the insurance policy, the remainder was to be paid to the estate to become a part of and be distributed as other personal property.

When the Amendment of March 4th, 1925, was passed by Congress, and the scope for payment of a remainder to the estate of the insured was widened, it would seem that the only reasonable construction which can be made of the intent of Congress in passing the amendment, so far as the estate clause is concerned, was to retain its original meaning in making payment to the estate of the insured and to eliminate payment of insurance to any person within the class permitted to be designated as a beneficiary, unless such person

was designated in the insured's certificate or policy. In other words, that no person within the permitted class would receive any benefit from War Risk Insurance unless specifically designated as a beneficiary, except in so far as he might derive such benefit as an heir at law of the insured decedent.

This arrangement on the part of Congress became perfectly logical when one bears in mind that when the amendments in question were passed, the War Risk for which the insurance was originally issued, had long since ceased to exist, and those to whom such insurance had been issued had returned to private life and were in a position to take care of their dependents in the usual way. Under this arrangement, unless the insured had some one within the permitted class that he cared to designate as beneficiary, his insurance was a part of his estate and would be distributed as other property holdings of the insured.

Another strong indication that Congress could not have intended that an administrator, in receiving a remainder on a War Risk Insurance certificate, should act only as a trustee for the purpose of transmitting the same to beneficiaries "within the permitted class" is that it is easily conceivable that instances might arise where there would be no one "within the permitted class" to receive the same. Such a situation would arise every time, Chapter 206 of the Session Laws of Minnesota, 1927, which is known as Section 8720-1, Mason's Minnesota Statutes, 1927, becomes operative.

"8720-1. INHERITANCE BY STEP-PARENTS OF DECEASED WORLD WAR VETERANS IN RESPECT OF WAR

RISK INSURANCE.—In every case where a resident of the State of Minnesota shall have served in the military or naval forces of the United States during the recent World War, and shall either during such service or thereafter have died while his life was insured by the United States by War Risk Insurance, and at the time of such death heretofore or hereafter occurring shall have left surviving him a step-parent but no spouse, children, father, mother, grandchildren, brothers or sisters, nieces, nephews, or other natural heirs, such step-parents shall, in case the decedent shall have left surviving him no natural or adoptive parent or upon the death of such natural or adoptive parents, succeed to and be vested with all of the rights of inheritance and otherwise of a natural parent of such decedent in respect of such insurance and the proceeds therefrom in the same manner and to the same extent as if such step-parents were the natural and legitimate parent of such decedent at the time of such death."

See *Schroeder vs. United States,* 24 F. (2nd) 420 (Ohio), decided February 21, 1928.

Also *National Union Bank of Rock Hill vs. McNeal* (*supra*), 145 S. E. 549 (Supreme Court of S. C., Nov. 20, 1928).

Another very strong indication that it was the intent of Congress, when the remainder was paid to an estate, that the Government should release control of the same and that it thereafter became subject to the laws of the state of domicile of the insured decedent, is found in the Act of March 4th, 1925, itself, as found in paragraph 9127½-303, U. S. Compiled Statutes 1925, Cumu-

lative Supplement. The latter part of this act provides as follows:

> "*Provided, further,* that in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917. (June 7, 1924, C. 320, Sec. 303, 43 Stat. 625, amended March 4, 1925, C. 553, Sec. 14, 43 Stat. 1310.)"

In that part of the act above cited, it will be noted that if the estate of the insured would escheat under the laws of the place of his residence, the insurance IS NOT paid to the estate, but escheats to the United States directly from the Veterans' Bureau. This shows that in passing the act in question, Congress imposed upon the United States Veterans' Bureau the duty to determine whether or not the balance of installments on insurance would escheat before paying the money over to the insured's estate, because in that case the act specifically states that the Government is not going to part with the funds. If it was not the intent of Congress that control of the remainder, after payment to the estate, be exclusively subject to the laws of the state of domicile, why did not Congress provide that in case the funds would escheat under the laws of the place of residence, then and in that case, the administrator of the estate of the insured veteran should re-

fund the moneys to the United States? This portion seems to clearly indicate that Congress was careful to provide that insurance money, such as that under consideration, should not pass out of the hands and out of the control of the Government as long as there was any possibility that Congress wanted the Government to have any further control of those funds.

Point B.

Conflict With Prior Federal and State Court Decisions.

a. The following cases hold that funds such as the one in question became a part of the estate the same as other assets:

In the case of *In re Singer's Estate*, 192 Wis. 524, 213 N.W. 479, hereinbefore cited, the court held:

> "It does not necessarily follow, however, that there was vested in the heirs any interest in this particular fund. What did vest was the right to the estate of the deceased, whatever it might be. The whole amount of the policy not having been paid to the beneficiary, the estate of the deceased was augmented by the present worth of future payments. * * * The mother having had a vested right to one-half of the estate, that right upon her death vested in her heirs, so that the trial court correctly held that the estate should be distributed, one-half to the father, Alex Singer, and one-half to the sisters and brother, as representatives of their deceased mother."

In the case of *In re Fink's Estate* (Wis.), 210 N. W. 834, one Ralph T. Fink, a soldier in the World War, took out a War Risk Insurance policy payable to his mother. She predeceased him, and he appointed no other beneficiary. Later Ralph died intestate leaving surviving him his father, Simon Fink, and two brothers. Ralph's estate was duly administered by his father, Simon, and the estate was assigned to him and he was discharged as administrator. Annual payments upon the policy were made to Simon as long as he lived. After Ralph's death, his father married again, and upon the latter's death, his widow, Minnie Fink, claimed the unpaid installments due upon the policy. The Court held:

> "Simon Fink was the sole heir-at-law of his son, Ralph, hence whatever comes into the estate of Ralph becomes the estate of Simon after his death. His estate is to be divided equally among his widow and two sons."

The case of *Whaley vs. Jones* (S. C.), 149 S. E. 841, is one wherein one John F. Sawyer while a soldier in the World War, was granted a War Risk Insurance on his life in the sum of ten thousand ($10,000) dollars. His mother, Eudora C. Sawyer, was the duly designated beneficiary. The insured died intestate in the County of Orangeberg, where he was domiciled, on December 3, 1922, leaving as his only heirs at law, his mother and his brothers and sisters.

The beneficiary, Mrs. Eudora Sawyer, received several monthly installments of said insurance but died about eighteen months after the death of the insured.

No other beneficiary was designated by the insured by will or otherwise.

The Government paid the commuted value of unpaid installments to the administratrix which amounted to $8,542.00, and also the further sum of $1,606.56, unpaid compensation due the insured. These funds constituted practically the entire estate of the insured; his other estate being insufficient to pay expenses of last illness, cost of administration, etc.

This case agrees with every contention of the administrator in the case at bar, supports his theory in every respect and so far as the funds become a part of the estate, the same as other assets is concerned, the court held:

> "We think it is settled, therefore, that upon the death of the designated beneficiary of the permitted class, the unpaid installments are payable to the insured's estate, and not to surviving members of the permitted class. * * * When these funds were paid to the estate of the insured, they ceased to be insurance or compensation, and became a part of the corpus of the estate of the insured."

In the Maine case of *In re Petition of Robbins*, 140 Atl. 366, decided February 7, 1928, the insured died September 24, 1918. He had two War Risk Insurance policies of five thousand ($5,000) dollars each. In one the mother was beneficiary. Mother died October 7, 1925. This case raised the question of distribution of proceeds of this policy which was paid by the Government to the administratrix of the estate of the soldier. Court says:

"So far as the Federal Government dealt with the insurance we hold its proceedings correct and unassailable.

"(1) Life insurance is a contract whereby one party insures a person against loss by the death of another.

"(2) In this case the Federal Government entered into a contract according to the terms of which, on the occurrence of the events that have admittedly transpired, the 'present value of the remaining unpaid monthly installments' was to be paid to the legal representative of the insured soldier. The Government made the computations, transmitted the funds, and relinquished control thereof.

"The administratrix found herself then the custodian of such present value in cash. Such money became in her hands a part of the corpus of decedent's estate, to be distributed according to the laws of this state, and we hold that Section 21, C. 80, R. S., applies and directs the administratrix to pay the same to Esther R. Phillips, the widow of the insured."

In the case of *In re Ogilvie's Estate,* 291 Pa. 326, hereinbefore cited under Point A, similarly holds that funds such as the one in question become a part of the assets of the estate.

So also the Louisiana case of *O'Quain vs. U. S.,* 28 Fed. (2nd) 350, hereinbefore cited under Point A.

So also the Tennessee case of *McDaniel vs. Sloan,* 11 S. W. (2nd) 894 hereinbefore cited under Point A.

In the Matter of Storum, 220 App. Div. 472, 221 N. Y. S. 771, a case involving funds similar to that in the case at bar, the court held:

> "Under said amendment the fund is payable to the estate of the insured. The distribution of the insured's estate is left to the Decedent Estate Law of the state."

In re Sabin's Estate, 227 N. Y. S. 120, 131 Misc. Rep. 451 (Surrogate Court, Lewis County, Feb. 3, 1928).

The Surrogate Court was reversed by the Supreme Court. Appellate Division, Fourth Department, May 12, 1928, 228 N. Y. S. 890. Held on reversal:

> "Order (131 Misc. Rep. 451, 227 N. Y. S. 120) reversed, with costs, and matter remitted to the Surrogate Court, to assess transfer tax in accordance with this decision, on the authority of Matter of Storum, 220 App. Div. 472, 221 N. Y. S. 771, and Matter of Ryan, 220 App. Div. 835, 222 N. Y. S. 891, affirming 129 Misc. Rep. 248, 222 N. Y. S. 253, on the opinion below. See also, Matter of Schaeffer, 130 Misc. Rep. 436, 224 N. Y. S. 305; Matter of Dean, 131 Misc. Rep. 125, 225 N. Y. S. 543; Matter of Shaw, note or reporter, 130 Misc. Rep. 440, 224 N. Y. S. 344, Chapter 844 of Laws of 1928, exempting from the application of the transfer tax provisions of the statutes all proceeds of any Federal War Risk Insurance policy of any veteran of the World War, which is payable or which may become payable to the estate of such veteran, became effective April 6, 1928, and has no application to this proceeding. All concur."

While the last mentioned case involved the payment of inheritance tax, upon inheritance from an estate which consisted of War Risk Insurance funds, the court could sustain the levying of such tax only on the

theory that such funds become a part of the estate the same as other assets.

Childers vs. Pollock (Ark.), 13 S. W. (2nd) 8, Syllabus:

> "Where husband died leaving policy of War Risk Insurance, one-fourth of which was payable to his mother in installments so long as she lived, and, at her death, balance, if any, to insured's estate, Held, that, on death of mother, commuted value of unpaid installments which would have been paid to her had she lived and which reverted to insured's estate was such an estate as entitled insured's wife to a dower interest therein, under Crawford and Mores Dig. #3535."

In course of opinion court said:

> "On his death his estate was immediately seized of the possibility that a portion of that fund would come to his estate, not as a remainder or reversion, but as a certainty, provided the fund was not consumed by the payment of installments during the lifetime of the mother. In other words, this possibility was an asset of the estate—personal property belonging to the estate, in which the widow was entitled to her dower interest when realized."

In re Greiner's Estate, 218 N. W. 437 (Wis.) decided March 6, 1928, the court in its opinion says:

> "The United States Veterans Bureau decided that the proceeds of the insurance policy in question should be paid to the estate of the deceased soldier, and it was accordingly so paid. It was

> the duty of the County Court to distribute it in accordance with the laws of this state. That court could not re-examine the question as to who was entitled to the insurance under the provisions of the federal law.
>
> "There being no contention that the County Court did not distribute the estate of Anton Greiner, Jr., in accordance with the laws of this state, the order must be affirmed. So ordered."

The case of *Condon vs. Mallan*, 30 F. (2nd) 995, App. D. C. involved the disposition to be made of the balance of the proceeds of a policy of War Risk Insurance upon the death of the beneficiary named in the policy. It was held that the law of District of Columbia, wherein insured under War Risk Insurance policy resided at date of death, was controlling in disposition of proceeds.

In the course of its opinion the court said:

> "After payment of the expenses of administering the estate, one-half of the balance of the fund should be distributed to the daughter of the deceased widow, and the other half to the sisters and half-sisters of Admiral Gill."

The case of *Bailey vs. Norman's Admr.*, 15 S. W. (2nd) 1005, 228 Ky. 790, while not exactly in point, indicates that the court considered balance of War Risk Insurance the same as other assets. In this case $7,489.00 War Risk Insurance was paid to insured's administrator in Kentucky. Widow claimed administration should be had in Illinois. In the course of its opinion the court said:

> "'(7) Under the law of Illinois the widow would get the whole fund in controversy. Under the law of Kentucky the widow gets one-half and the husband's next of kin the other half. The Circuit Court properly distributed the funds under the law of Kentucky. The allowance to the administrator and its attorneys was reasonable.'"

In the case of *Branch Banking and Trust Company vs. Brinkley,* 144 S. E. 530 (Supreme Court of N. C. decided Sept. 19, 1928), one Jack W. Montague received War Risk Insurance in the sum of $10,000.00, payable to his brother, John M. Montague, and his sister, Walina Petway. The insured was killed in action on September 26, 1918, while serving in the U. S. Army in France. His brother, John M. Montague, died from wounds received in action, on October 6th, 1918. Therefore the insured was survived by his brother, John M. Montague, and his sister, Walina Petway.

The court in the course of its opinion said:

> "Walina Petway therefore took the estate, *not as beneficiary,* but as distributee under the laws of North Carolina then in force."

National Union Bank of Rock Hill vs. McNeal, 145 S. E. 549 (Supreme Court of S. C., Nov. 20, 1928).

From this case it appears that one James W. Carter, colored, in 1917 inter-married Daisy McNeal, who had three illegitimate children. Later Carter was inducted into the United States Army and a $10,000.00

Government War Risk Insurance policy was issued to him wherein Daisy Carter was designated as the beneficiary. Carter died in January, 1918, and the beneficiary received monthly installments of $57.50 under said policy until her death on June 27th, 1920, and thereafter the computed unpaid installments of War Risk Insurance policy were paid in a lump sum to the estate of the insured.

In this case the court held that the mother inherited a part of the soldier's estate as the widow, although she was beneficiary under the policy until the time of her death and that upon her death her illegitimate children were entitled to share in the fund paid to the estate as heirs at law of their mother.

It may be noted that the ultimate recipients of the fund in this case were not within the designated class of beneficiaries under the Federal statutes.

In re Root's Estate, 226 N. W. 598 (N. D.) decided August 12, 1929, the soldier had War Risk Insurance payable to mother as beneficiary. Soldier died, leaving father and mother. Mother received installments until time of her death. In the meantime father and mother were divorced. Upon her death the Veterans Bureau paid residue to the soldier's estate. Held:

> "* * * These avails become as much a part of the estate as any other sums of money due and owing to the decedent at the time of his death."

b. The following cases hold that funds, such as the one in question, are subject to the payment of claims against the estate of the deceased insured, or if the pay-

ment of claims is not directly involved, the Court from its decisions on the point at issue could justify such decision only by holding, if the queston of payment of claims was presented to it, that such funds were subject to their payment.

In the South Carolina case of *Whaley vs. Jones,* 149 S. E. 841, hereinbefore referred to under subdivision *a* of Point B, in the course of its opinion holds:

> "(5) It will be observed that under the Act of March 4, 1925, the Congress undertook to impose no limitation whatsoever upon the funds in question after they were paid into the estate of the insured, except when the estate of the insured would escheat under the state law. Then, and in that, the escheat should be to the United States and not to the state. This being the only limitation, it follows therefore that the funds in question are assets in the hands of the administratrix to be administered in accordance with the laws of the state of South Carolina, and as such are liable and subject to the payment of the indebtedness of the insured."

From the Tennessee case of *McDaniel vs. Sloan,* 11 S. W. (2nd) 894, hereinbefore cited, the court holds as follows:

> "Looking to the Tennessee statute governing the distribution of the estate of one who dies intestate, it is seen that Section 4172 of Shannon's Code, reads as follows: 'The personal estate as to which any person dies intestate, AFTER THE PAYMENT OF THE DEBTS AND CHARGES AGAINST THE ESTATE, shall be distributed as follows: * * * (2) to the widow altogether,

> if there are no children nor the descendants of children.'"

In the case of *Condon vs. Mallan*, 30 F. (2nd) 995, hereinbefore cited, the court said:

> "After payment of the EXPENSES OF ADMINISTERING THE ESTATE, one-half of the balance of the fund should be distributed to the daughter of the deceased widow, and the other half to the sisters and half-sisters of Admiral Gill."

In the Kentucky case of *Bailey vs. Norman's Administrator*, 15 S. W. (2nd) 1005, 228 Ky. 790, hereinbefore cited under subdivision *a*, the court held:

> "The allowance to the administrator and its attorneys was reasonable."

In the Michigan case of *In re Dempster's Estate*, 226 N. W. 243, the court held:

> "In determining that the personal property of an intestate, subject to the payment of his lawful debts, is to be distributed among those persons who were his heirs at the time of his death, the foregoing cases are in full accord with the Michigan decisions: Richmond *v.* Railway Co., 87 Mich. 374, 49 N. W. 621; Parks *v.* Norris, 101 Mich. 71, 59 N. W. 428."

In the Matter of Storum, 221 N. Y. S. 771, hereinbefore cited, the court held: that a fund such as the one in question should be added to the estate and distributed according to Section 98 of the Decedent Estate Law, which reads as follows:

"Distribution of personal property of decedent. If the deceased died intestate, the surplus of his personal property AFTER PAYMENT OF DEBTS, and if he left a will, such surplus, after the payment of debts and legacies, if not bequeathed, must be distributed to his widow, children, or next of kin, in the manner following:"

It should be borne in mind in considering this subdivision, that it is reasonable to expect that every court holding that funds such as that in question become a part of the estate of the deceased soldier the same as any other asset, and which were considered under Subdivision *a*, would hold, if the question were presented to them, that such funds are subject to the claims of creditors against the estate of the insured, because it would seem that they could not justify a decision to the contrary and at the same time hold that such funds are a part of the estate.

c. The following cases hold that the heirs, or those entitled to the funds such as the one in question, are determined as of the date of the death of the insured.

In the South Carolina case of *Whaley vs. Jones*, 149 S. E. 841, hereinbefore cited, the court in the course of its opinion holds:

"In construing section 514 of title 38 of the Code of the United States (38 U. S. C. A. c. 514), this court has held that commuted unpaid installments paid to the estate of insured after death of designated beneficiary, in accordance with the provisions of said section, must be distributed to those who answer the description of

heirs or distributees at date of insured's death. Bank v. McNeal, 148 S. C. 30, 145 S. E. 549, 551. See, also, *In Re* Cross' Estate, 147 Wash. 441, 266 P. 711; Fink's Estate, 191 Wis. 349, 210 N. W. 834; *In re* Storum's Estate, 220 App. Div. 472, 221 N. Y. S. 771; Palmer *vs.* Mitchell, 117 Ohio St. 87, 158 N. E. 187, 55 A. L. R. 566; Petition of Robbins, 126 Me. 555, 140 A. 368; *In re* Ogelvie's Estate, 291 Pa. 326, 139 A. 826; O'Quain *v.* United States (D. C.) 28 F. (2nd) 350.

In the case of *In re Singer's Estate,* 192 Wis. 524, 213 N. W. 479, hereinbefore cited, the court held:

> "When this sum was paid to the administrator under the law, it must be distributed to his heir as of the date of his death."

In the Matter of Storum, 221 N. Y. S. 771, hereinbefore cited, the Court held:

> "* * * Nowhere in the act as amended is it provided that the distributees shall be determined as of the date of the death of the beneficiary named in the insurance certificate. Generally there can be no question but what a fund that comes into the estate of a decedent after his death should be added to the estate left by the decedent and distributed according to Section 98 of the Decedent Estate Law."

In the Ohio case of *Palmer vs. Mitchell,* 158 N. E. 187, decided June 15, 1927, involving funds similar to that in question, the court held:

> "We, therefore arrive at the conclusion that the lump sum representing the present value of monthly installments thereafter payable was properly paid the Federal Government to the administrator of Basil's (estate) and that the same should, in case of intestacy, be distributed to those who are entitled to his personal estate under the law as it existed at the time of Basil's death."

In the later Ohio case of *Tax Commissioner of Ohio vs. Rife et al.*, 162 N. E. 390, decided in June, 1928, the court sustains its former holding by inference.

In the Iowa case of *In re Pivonka's Estate*, 211 N. W. 247, in referring to a fund similar to that in question, Held:

> "It would therefore be disposed of as assets of the estate of said decedent and as of the date of the death of said decedent."

In the Wisconsin case of *In re Greiner's Estate*, 218 N. W. 437, the unpaid balance of War Risk Insurance was paid to the estate of the father of the insured veteran, although said father was named beneficiary in the policy and died after the date of death of the veteran, showing that the court held that those entitled to the fund were determined as of the date of the death of the veteran.

In re Ryan's Estate, 220 App. Div. 835, 222 N. Y. S. 253, the Surrogate Court holds similarly that War Risk Insurance goes to the estate to be distributed under Section 98, Decedent Estate Law, and this is affirmed App. Div. 222 N. Y. S. 891.

The Supreme Court of Tennessee in the case of *In re Smallwood's Estate,* 300 S. W. 572, holds similarly on this question.

Similarly the Michigan case of *In re Dempster's Estate,* 226 N. W. 243. In this case there was a contest between father of deceased soldier, insured under War Risk Insurance Act, and children, of the soldier's adopted mother. After the soldier died, the Michigan statutes were changed so as to provide that adopted parents became heirs at law of an adopted son. State statutes held not retroactive. At the time of the soldier's death, statutes held that father would be sole heir at law. Held: the latter statutes applied. In the course of its opinion the court said:

> "In determining that the personal property of an intestate, subject to the payment of his lawful debts, is to be distributed among those persons who were his heirs at the time of his death, the foregoing cases are in full accord with the Michigan decisions: Richmond *v.* Railway Co., 87 Mich. 374, 49 N. W. 621; Parks *v.* Norris, 101 Mich. 71, 59 N. W. 428."

See also the Ohio case of *Waltz vs. Waltz,* 166 N. E. 896, which cites the case of *Palmer vs. Mitchell* (*supra*).

From the District of Columbia case of *Condon vs. Mallan,* 30 F. (2nd) 995, may be gleaned the following: Distributees entitled to share in the balance of War Risk Insurance paid to the insured's administrator are determined as of the date of the insured's death.

Similarly the North Carolina case of *Branch Banking and Trust Company vs. Brinkley,* 196 N. C. 40, 144 S. E. 530, holds that distributees of the insured soldier are ascertained at time of his death.

In the South Carolina case of *National Union Bank of Rock Hill vs. McNeal*, 145 S. E. 549, the court holds in effect as follows: Funds paid to the estate of the insured under War Risk policy are to be distributed among heirs at law of the insured and as at the date of his death.

The court in the case of *In re Root's Estate*, 226 N. W. 598, (N. D.) hereinbefore cited, holds similarly that the distributees are determined as of the date of death of the deceased soldier.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of its supervisory power in order that the decision of the Minnesota Supreme Court may be made to conform with the decisions herein quoted and in order that your decision in this case may become a guide for the Supreme Courts of all the states in the United States and thereby establish uniformity of decisions throughout the United States on the points and questions involved, and that to such an end a writ of certiorari should be granted and this court should review the decision of the Supreme Court of the State of Minnesota and finally reverse it.

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Supreme Court of the United States

OCTOBER TERM, 1930.

No. 176.

EDWARD A. PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, DECEDENT, *Petitioner-Appellant,*

vs.

SELMA HALLBOM,

Respondent.

RESPONDENT'S BRIEF.

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vs.

SELMA HALLBOM,

Respondent.

RESPONDENT'S BRIEF.

I.

ARGUMENT.

Jacob E. Hallbom was a soldier in the United States Army in France in 1917, and while in such service he applied for and was granted a Government War Risk Insurance certificate in the sum of $10,000.00, payable to his father, Peter J. Hallbom, in case of his death.

Jacob E. Hallbom died October 20th, 1925, and monthly payments were thereafter made by the War Risk Insurance Bureau to his father.

On the 22nd day of February, 1928, his father died, leaving surviving him his wife, Selma Hallbom, and several adult children.

The administrator of the estate of the war veteran contended that the insurance money paid to him by the War

Risk Insurance Bureau should be treated as the rest of the veteran's estate and should be subject to the claims of his creditors, the same as any other part of his estate.

It appears, however, that there was considerable doubt in the administrator's mind as to whether this should be done, for in his final account is the following:

> "Claims have not been paid by the administrator by reason of the fact that parties have appeared in open court and personally objected to the payment of claims from funds derived from U. S. War Veterans' Insurance and your representative desires to withhold such payment until such question has been settled."

The Probate Court of Kandiyohi county held that this insurance fund was subject to the debts of the insured.

Selma Hallbom, the mother of the war veteran, appealed therefrom to the District Court and that Court held that the insurance was not subject to his debts, but should be paid by the administrator to the ultimate beneficiaries, such beneficiaries to be determined by the law of descent of personal property in the state of Minnesota.

The Supreme Court of the state of Minnesota affirmed the decision of the District Court with directions.

The appellant has contended, and still insists, that the claims of creditors of the war veteran should first be paid before the mother of the war veteran should receive anything from the insurance fund.

The result has been this prolonged litigation which has deprived the aged and dependent mother of any of the benefits of this insurance, for she has recently died.

It is well that the matter is now before the Supreme Court of the United States for its decision and that a settlement of the question for all time should be had so that other de-

pendents of war veterans will not have to suffer because of a conflict of opinions.

If the contentions of the appellant should be followed, this would result: After deducting claims of creditors of the soldier in the amount of $3,791.38, the mother would be entitled to $2,543.47 and the same amount would be passed on to the estate of the deceased father, there to be subjected again to the claims of creditors of the father before the mother would be entitled to any part of same, if any part remained.

It does not seem that it was ever the intention of Congress that such a thing should happen. As to what Congress intended will be discussed later in this brief.

The Supreme Court of Minnesota held that the fund was exempt from the claims of creditors and further held that the payment by the War Risk Insurance Bureau to the representative of the estate of the insured was merely a matter of procedure and that the representative should distribute it only to persons included "within the permitted class," who were living at the time of distribution, and that those who would receive the insurance would receive it as beneficiaries under the policy and not as heirs at law.

The Court further held that, under its view of the law, Selma Hallbom, the mother, should receive the insurance money, and in so holding, said:

> "Such insurance in a measure was adopted as a substitute for unsatisfactory pension legislation for the benefit of those named. It was furnished at less than cost to a particular class. In the instant case the service man's father, who received payments for a few months, did not inherit the insurance. He received those payments by virtue of his seniority and the absence of others in 'the permitted class.' Upon his death his

name automatically dropped from the roll of 'the permitted class' and the next name thereon is the mother."

The appellant urges that the Supreme Court of Minnesota erred and bases his contentions on Sec. 9127½-303 *U. S. Compiled Statutes,* 1925. He relies only on that section of the statutes relative to War Risk Insurance. The other parts of the contract of insurance and of the statutes which are part of same, are ignored.

It is respectfully submitted that, in determining whether the decision of the Supreme Court of Minnesota should be affirmed or reversed, it is necessary to consider the whole contract of insurance. The above section on which the appellant relies is only a part of that contract.

The certificate issued to Jacob Hallbom by the United States Government states what the contract consists of in the following words:

"Subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract."

On the certificate under the heading "IMPORTANT NOTICE," is the following:

"The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable and is not subject to the claims of the creditors of the insured or of the beneficiaries.

"Should a claim arise under this certificate you are requested to write direct to the Bureau of War Risk Insurance, Treasury Department, Washington, D. C., in order to secure a prompt settlement. There will be no

expenses in connection with proving a claim and collecting the amount due, other than small fees to notaries. It will not be necessary to consult or employ an attorney, claim agent, or other person to secure benefits under this certificate."

The Federal War Risk Insurance exemption statute which has been a part of the War Risk Insurance Act ever since its adoption is as follows:

"The compensation, insurance, and maintenance and support allowance payable under Parts II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable." (38 U. S. C. A., Section 454.)

The legislative purpose in creating War Risk Insurance is stated to be "to give to every commissioned officer and enlisted man * * * greater protection for themselves and their dependents." Act, Oct. 6, 1917, C. 105, Sec. 2, 40 Stats. 409.

And as said by the Supreme Court of Minnesota, "This purpose is reaffirmed in the Act of June 7, 1924, 43 Stat., Chap. 320, 300, 38 U. S. C. A. 245, 511. It was restated in the Act of March 4, 1925, 43 Stat. 1308, 12."

The application for this insurance, which is made a part of the contract of insurance, provides:

"In case any beneficiary die or become disqualified

after becoming entitled to an installment, but before receiving all installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will, as would under the laws of my place of residence be entitled to my personal property in case of intestacy."

The Statutes authorized the War Risk Insurance Bureau to make rules and regulations to carry out the purposes of the law. They provide:

"If no beneficiary within the permitted class be designated by the insured, either in the insured's lifetime or by his last will and testament, or if any above designated beneficiaries is to become disqualified or does not survive the insured, the insurance (or if any above designated beneficiary shall survive the insured, but shall not receive all the installments, then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's last place of residence be entitled to his personal property in case of intestacy" (Bulletin 1, p. 4, issued Oct. 15, 1917).

The War Risk Insurance Act prior to and at the time and after the amendment, provided that the insurance should only be payable to a certain class of beneficiaries. The amendment of March 4th, 1925, provides that:

"The insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law or sister-in-law, or to any or all of them, and also during total and permanent disability to the injured person. (June 7, 1924, c. 320,

Sec. 300, 43 Stat. 624; Mar. 4, 1925, c. 553, Sec. 12, 43 Stat. 1308.)" (38 U. S. C. A., Sec. 511.)

The Act for many years provided and still provides that the insured can only designate a beneficiary within the permitted class. In the Statutes is found the following:

"Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries without the consent of such beneficiary or beneficiaries but only within the classes herein provided. (June 7, 1924, c. 320, Sec. 301, 43 Stat. 624; Mar. 4, 1925, c. 553, Sec. 13, 43 Stat. 1309.)" (38 U. S. C. A., Sec. 512.)

Rules and regulations prescribed by a department of the Government in pursuance of a statutory authority have the force of law.

Cassarello vs. United States, 271 Fed. 486 and cases cited therein.

The amendment of March 4th, 1925, provides that after the death of the named beneficiary the present value of the monthly installments thereafter payable shall be paid to the estate of the insured.

The appellant claims that this slight change made the insurance such a part of the estate of the insured that it became subject to the claims of creditors, although the Act provided, and still provides, that the fund shall not be subject to the claims of creditors. The appellant also claims that this change in this part of the Statutes entirely eliminates the dependents of the war veteran and his next of kin as beneficiaries and makes the fund merely a part of the estate of the insured to be passed on first to creditors and then to others who may be not even dependents or next of kin of the war veteran, but mere strangers.

In determining the question involved, it would seem that the primary object of Congress in creating the War Risk Insurance should be kept in mind and that the contract of insurance as a whole should be considered.

The Act of March 4, 1925, causes an apparent conflict in the terms of the contract of insurance, but when considered as an administrative measure and procedural, the apparent conflict vanishes.

In construing this contract, full force and effect should be given to each part, including the application for insurance, the certificate of insurance, the regulations of the War Risk Bureau and the War Risk Insurance Act as a whole with the amendment, and from the entire contract the intentions of the parties should be determined.

It is true that a beneficiary before the death of the insured has no vested rights. The war veteran may change the beneficiary at will.

However, under the contract, Jacob E. Hallbom was entitled to certain substantive rights which after his death should be carried out.

The deceased war veteran had every reason to believe that after the death of his father, his dependent mother would receive the benefits of this insurance. The manner of payment might not have concerned him, but the fact that she would receive it must have meant a great deal to him, and from his application, from the certificate of insurance and from the department regulations and the Act itself, he was assured and had a right to believe that his dependents and next of kin, his father, and then his mother, would receive this insurance exempt from the claims of creditors.

At first the insurance was largely an experiment and it would be expected that difficulties in carrying it out would be encountered and that the Government might need to make

minor changes in the law as to the carrying out of the contract. It is but reasonable to assume that Congress, by the amendment of March 4, 1925, did not intend to do violence to the substantial terms of the insurance contract, but did intend to obviate the difficulty of ascertaining and making payments to the beneficiaries—that is the persons within the permitted class—and for this purpose directed that the money still owing on the contract of insurance should be paid to the estate of the soldier; that is, to his legal representative so that said representative could distribute the money to the beneficiaries who might be entitled thereto under the terms of the contract.

It will hereafter be shown that Congress, in passing the said amendment, merely intended "to correct a few administrative provisions of the World War Veteran Act," for Senator Reed of the Committee so stated in explaining the measure to the Senate.

It is respectfully submitted that it was never the Government's purpose to create estates for the creditors of those who served in the World War.

After the amendment of 1925 the same as before the amendment, the insured could designate beneficiaries only within the permitted class and he could so designate them by will, but he could not will the insurance to his estate. Why then should it be said that this amendment made the insurance a part of the estate of the insured, even though the insured could not make it a part?

It is apparent that Congress intended that the insurance should be distribtued only to persons and should not become a part of the estate as such.

The last part of Section 9127½-303 U. S. Compiled Statutes, 1925, referred to by appellant, is as follows:

"Provided, further, that in cases when the estate of

an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation. This section shall be deemed to be in effect as of October 6, 1917 (June 7, 1924, c. 320, p. 303, 43 Stat. 625, amended March 4, 1925, c. 553, p. 14, 43 Stat. 1310)."

Before the funds should be paid to the personal representative of the war veteran there must be a person or persons to whom it could be distributed, for, if it would escheat to the state, the Statute says it "shall not be paid to the estate."

Since the amendment of March 4, 1925 (38 U. S. C. A., Sec. 514), the War Risk Insurance Bureau has commuted the remaining payments after the designated beneficiary's death and has paid same to the representative of the estate of the insured and the Bureau has done this in all cases whether the insured died before or after the amendment.

In *Reivich v. United States, et al.*, Circuit Court of Appeals, Sixth Circuit, 25 Federal Reporter, 2nd series, page 670, the Court had under consideration an insurance fund which was paid by the War Risk Insurance Bureau to the estate of the deceased soldier after the passage of the amendment of March 4th, 1925.

It appears that the insured died in the year 1918 and that the beneficiary under his will died in June, 1924. The Veterans' Bureau then advised the brother of the insured that under the laws of Iowa he was entitled to the remaining installments.

In May, 1925, the brother was advised by the Veterans' Bureau that "owing to the provisions of Section 303 of the Veterans' Act, as amended March 4, 1925 (38 U. S. C. A.,

Sec. 514), the remaining payments should be commuted and paid to the estate of the insured." This was done after making certain deductions.

The brother of the insured became administrator d. b. n., c. t. a., of his estate. As such administrator he claimed that certain payments, which had previously been made to him through error, should not be deducted from the commuted remaining payments; but that the whole amount should be paid to him as such administrator. The court said:

> "* * * neither creditors of the deceased nor next of kin nor, we presume, the state, has any interest whatever."

The Court held that the brother of the deceased soldier was:

> "with reference to the claim involved, not an administrator in the ordinary sense, but only a Trustee for himself as an individual—and a naked trustee at that. Reivich, as administrator, would hold whatever he received in this case merely for the purpose of paying it over to himself, and neither the creditors of the deceased nor next of kin nor, we presume, the state, has any interest whatsoever."

Thus, it appears by the foregoing decision of the Circuit Court of Appeals that although the commuted insurance was paid to the estate of the deceased soldier, nevertheless the brother, the personal representative of the deceased soldier, held same as the Court said: "As a trustee for himself as an individual" and held the fund as administrator "merely for the purpose of paying it over to himself."

In *White vs. United States*, 270 U. S. 175, the Supreme Court of the United States, in speaking of this particular insurance, said:

"It was a new experiment in which changes might be found necessary, or at least, as in this case, feasible more exactly to carry out his will. If the soldier was willing to put himself into the Government's hands to that extent no one else could complain. The only relations of contract were between the Government and him. White's mother's interest at his death was vested only so far as he and the Government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half. She is a volunteer and she can not claim more."

It is true that a beneficiary has no vested interest only in so far as stated in the above opinion as the insured and the Government makes it so and the beneficiary's interest is subject as stated in said opinion "to any conditions upon which they might agree"; that is, the insured and the Government.

But, where the Government has agreed with the insured that the insurance fund shall be paid to the war veteran's dependents and next of kin, who come within the permitted class, then that part of the insurance contract becomes a substantial part of same upon which the insured may depend and should not be construed as having been set aside by any particular amendment, if such amendment can be harmonized with the rest of the contract so that the substantial terms thereof will not be violated.

The Supreme Court of the United States again had occasion to construe the contract of insurance and the nature thereof in the case of *United States vs. Worley*, 281 U. S. 339, and in speaking of its purposes, the Court said:

"The Act of October 6, 1917, discloses a purpose on the part of the United States to protect those engaged

in war service and their dependents, and to contribute to their financial welfare. It provides for payment by the United States of family allowances in certain cases and of compensation for death or disability of officers, enlisted men and members of the Army and Navy Nurse Corps in active service resulting from injury or disease contracted in the line of duty. Art. II and III.

"And in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III,' the United States provided life and disability insurance. Article IV. Its benefits were extended without application therefor to those who were totally and permanently disabled or who died in active service after our entry into the war, April 6, 1917, and prior to the expiration of 120 days after the publication of the terms of the insurance. All such persons were deemed to have applied for and to have been granted insurance. Section 401. The United States bore expenses of administration and excess mortality and disability cost resulting from the hazards of war. The insurance was limited to $10,000 and was made payable in 240 equal monthly installments; it was made not assignable nor subject to claims of creditors of the insured or of the beneficiary. The premiums were not adequate. The Congress intended that the United States should bear, and undoubtedly it has borne, a large part of the cost. Consequently, the payments include both insurance and pension. *White vs. United States*, 270 U. S. 175, 180, 70 L. Ed. 530, 538, 46 Sup. Ct. Rep. 274."

In *Cassarello vs. United States* (D. C.), 271 Fed. 486, affirmed (C. C. A.) 279 Fed. 396, the Court discussed very fully the nature of this contract of insurance and the legislative intent relative thereto, as follows:

"Furthermore, rules and regulations prescribed by a department of the Government in pursuance of a statutory authority, have the force of law. *U. S. vs. Grimaud*, 220 U. S. 506, 517, 31 Sup. Ct. 480, 55 L. Ed. 563; *United States vs. Birdsall*, 233 U. S. 231, 34 Sup. Ct. 512, 58 L. Ed. 930; *Covey vs. United States* (D. C.), 263 Fed. 768, 775. As was said in *Caha vs. United States*, 152 U. S. 211, at page 221, 14 Sup. Ct. 513, at page 517 (38 L. Ed. 415).

"* * * There was no necessity for a formal introduction in evidence of such rules and regulations. They are matters of which courts of the United States take judicial notice. Questions of a kindred nature have been frequently presented, and it may be laid down as a general rule, deducible from the cases, that wherever, by express language of any act of Congress, power is entrusted to either of the principal departments of government to prescribe rules and regulations for the transaction of business in which the public is interested, and in respect to which they have a right to participate, and by which they are to be controlled, the rules and regulations prescribed in pursuance of such authority becomes a mass of that body of public records of which the courts take judicial notice.'

"* * * In arriving at a proper decision, this Court may therefore turn for assistance, not only to the certificate of insurance, but also to the application for insurance, and the rules and regulations of the department, as well as the act itself, and, where the wording of the

act is somewhat obscure, it may seek the legislative intent as expressed by the authors of the law, as a guide. In a very recent opinion of the Supreme Court *(Duplex Printing Press Co. vs. Deering,* etc., 254 U. S. 443, 41 Sup. Ct. 172, 65 L. Ed.—rendered January 3, 1921), Justice Pitney said:

"'By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body. *Aldridge vs. Williams,* 3 How. 9, 24; *United States vs. Union Pacific R. R. Co.,* 91 U. S. 72, 79; *United States vs. Freight Association,* 166 U. S. 290, 318. But reports of committees of House or Senate stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure. *Binns vs. United States,* 194 U. S. 486, 495. And this has been extended to include explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in course of passage. *Binns vs. United States, supra; Penna. R. R. Co. vs. International Coal Co.,* 230 U. S. 184, 198, 199; *United States vs. Coca Cola Co.,* 241 U. S. 265, 281; *United States vs. St. Paul, M. & M. Ry. Co.,* 247 U. S. 310, 318.'

"The application for insurance contained the following clause:

"'In case any beneficiary die or become disqualified after becoming entitled to an installment but before receiving all installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last

will and testament, or in the absence of such will, as would under the laws of my place of residence be entitled to my personal property in case of intestacy.'

"This application was made part of the contract of insurance in the certificate of insurance which so far as it had a bearing on this suit, contains the following:

" 'Subject to the payment of the premiums required, this insurance is granted under the authority of an act amending "An act entitled 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, and subject in all respects to the provisions of such Act, or any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under the authority of the act, shall constitute the contract. * * *

"Important Notice.

" 'The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable and is not subject to the claims of the creditors of the insured or of the beneficiaries.'

"Among such regulations mentioned in the certificate it would be necessary to include Bulletin 1, issued October 15, 1917, and providing on page 4 for the insertion in a policy of the following:

" 'If no beneficiary within the permitted class be designated by the insured, either in the insured's lifetime or by his last will and testament, or if any above designated beneficiaries is or becomes disqualified or does not survive the insured, the insurance (or if any above designated beneficiary shall survive the insured, but shall not

receive all the installments, then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy.'

"In considering these various provisions of the regulations, application, and certificate, it is necessary also to keep in mind the words and purpose of the Act. Article 3 of the Act dealt with compensation for the soldier and a limited class of dependents, in case of his disability while in active service, or for such dependents in case of his death. It partakes of the nature of a pension. Article 4, containing the insurance provisions, states:

"'Sec. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article 3, the United States * * * shall grant insurance,' etc. Comp. St. 1918, Comp. St. Ann. Supp. 1919, Sec. 514u.

"Protection for the soldier and his dependents is the primary object of the Act. It purposely limits the beneficiaries. Section 402 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, Sec. 514uuu).

"'The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother, or sister.'

"By the word 'only' is limited expressly the class of beneficiaries. In the same section it further provides:

"'Subject to regulations, the insured shall at all times

have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided.'

"This negatives any idea of a right vested during the lifetime of the insured. Nor is there anything in the language of the Act itself, or as appearing from the discussions of the bill by committte members on the floor, to lend countenance to any construction that a beneficiary had a vested right in installments not yet accrued, even after the death of the insured, but the contrary seems to have been in mind.

"Mr. Rayburn of the Committee of Interstate and Foreign Commerce submitted a supplemental report in the House on September 5, 1917, containing these words:

" 'Speculation in the insurance must not be permitted, it must be unassignable and free from the claims of creditors, both of the insured and of the beneficiary. It must not be payable to any and every one, but to a limited class of relatives.'

"In a discussion on the floor of the House, in dealing with that section of the act providing for the passing of installments to the permitted class under intestate laws, unless a beneficiary is designated during insured's life or by his will, within the permitted class, Mr. Rayburn said in part:

" 'The United States Government says to this man (the soldier): "We will carry that risk for $50 a thousand. We will give you the lowest insurance that you can get as a sound, well man in peace times. If you have a wife, though, or child or mother dependent upon you, and you are killed, this insurance money may go to them, because you have a personal and direct interest

in them. Some distant cousin off yonder that you never saw, or some uncle, probably, who is living in opulence and who does not need the money, will not get it".' *Cong. Rec.*, Sept. 8, 1917, p. 6761.

"Senator Williams, in charge of the bill in the Senate, made use of the following language:

"'It (the Government) is not going into the insurance business at all. In the first place, it has confined its activities to the soldiers and the sailors in the service. In the second place, it confines the beneficiaries to the soldiers' and sailors' dependent families.' *Cong. Record*, Vol. 55, pt. 8, Oct. 3, 1917, p. 7690.

"Comptroller Warwick, in an opinion to the Secretary of the Treasury, July 5, 1919, said:

"'This insurance feature of the law is not an out-and-out contract of insurance on an ordinary business basis; neither is it a pension, but it partakes of the nature of both.'

"Both Senator Williams and Comptroller Warwick here touched upon a vital distinction to be borne in mind, that this is neither a pension nor insurance. It partakes in some respects of the nature of both.' It is not governed by the law of either. It is governed by the statute creating it, and must be construed in accordance therewith. Section 402 of the bill, as originally introduced, in naming the class of beneficiaries contained the provision:

"'And to such other persons as may be provided from time to time by regulation.'

"These words were stricken out by Senate amendment 108. This shows clearly the intention of Congress to limit and fix the class of beneficiaries and to prevent any extension even by the bureau. The installments are

intended for the soldier's dependents within a limited class, and only these."

There are ambiguities in the amendment of March 4, 1925, and the Circuit Court of Appeals in *United States vs. Woolen*, 25 Fed. (2d) 673, recognizes this fact. On page 676, the following is found:

> "There are ambiguities in this section, but none suggested which may apply to this case except reference to the last payment made under an existing award: * * *
>
> "We are thus confirmed in concluding, that this amended section 303 controls all installments which became payable after Betty Woolen's death, and that the plaintiff, as surviving husband and in her right, cannot recover therefor. If he is in fact the sole person within the permitted class interested in the estate of the insured, that will appear when proceedings are had to make him the official representative of the estate; but it does not appear by this record."

That the amendment to the War Veterans' Insurance Act of March 4, 1925, was intended merely to correct administrative provisions will be shown by what occurred during the passage of said amendment.

It is respectfully submitted that, if possible, the amendment of March 4, 1925, should be reconciled with the other provisions of the Act and there appearing to be an uncertainty as to the application of this amendment, it seems that a resort to what occurred in the passage thereof may be had in order to ascertain the legislative intent.

It will also be shown that this bill was passed without being read in the Senate and that Senator Reed of Pennsylvania, who was a member of the Committee on Finance to which the bill was referred and who had charge of the bill

in the Senate, made, in order to save time, an oral report so as to avoid the reading of the bill and the Senate relying upon this report passed the bill.

The following occurred in the Senate at the time the bill came before that body and may be found in the Congressional Records of the 68th Congress, 2nd Session, Vol. 66, Pt. 5:

Senator Reed of Pennsylvania said: "Mr. President, I ask unanimous consent for the immediate consideration of the bill (H. R. 12308) to amend the World War Veterans' Act and to add penalties for fraudulent misrepresentations in applications for the bonus. It adds nothing to the cost to the United States. It merely corrects a few inaccuracies that have been found to exist in the system adopted in the code last spring."

(*Cong. Records*, p. 5261.)

Senator Robinson said: "The action of the Committee in striking out that provision is not intended to determine the matter finally, but merely to hold it in suspension until it can be studied more carefully."

Senator Reed of Pennsylvania said: "That is exactly the situation. The House has had three months' work on this particular bill and dropped it into our laps in the last week of the session, and we do not want to take the responsibility of passing on *matters of substance* at this late date, all we do is to correct the *administrative irregularities.*"

(*Cong. Records*, p. 5261.)

The Congressional Record shows that the Senate was pressed for time and that although requested, the bill was not read, but upon the assurance by Senator Reed that the bill was merely to correct administrative irregularities, he was permitted to present a short explanation of the bill.

Senator Reed: "If the Senator will permit me, I think I can present an explanation in less than 10 minutes."

(Cong. Records, p. 5262.)

To show that it was the intention of Congress to relieve the Veterans' Bureau of the work of distributing funds to those entitled, we quote from the explanation of Senator Reed:

> "Next is a section found on page 16, which allowed the Veterans' Bureau to pay directly to creditors or persons entitled, any compensation or amount due under $500.00. We struck it out because that would make the Veterans' Bureau practically a Probate Court and we thought that they ought not to have to do that work."
>
> *(Cong. Records,* p. 5262.)

And, to show that Congress intended that those who should receive compensation under the World War Veterans' Act should still be dependents or next of kin, we again quote Senator Reed, who was explaining the report of the Committee, as follows:

> "The next is a provision on page 23 providing that widows shall be entitled to compensation allowed to dependents. There was no definite time fixed for marriage of these widows, and it seemed proper that some time should be fixed, so we have limited it to 10 years after the last day of the war, July 21.
>
> "I am going over these items pretty rapidly."
>
> *(Cong. Records,* p. 5262.)

And the following explanation by the Committee was given:

> "We struck out several sections following that, and next come to page 44. That re-enacts the first section of

the insurance title of the World War Veterans' Act and specifies the persons who are to be named as beneficiaries. It provides that where the status of the beneficiary changes between the designation and the time of death, the insurance is not voided. That has been the case in the past. A man might have a dependent mother at the time he took his insurance, but the dependency might change while he goes on paying his premiums. Then when he dies, the mother is suddenly told that she is not entitled to insurance because she is no longer dependent. Obviously that is not right, because it is a *contract relation* with the United States. The man pays for his insurance, and it ought to remain in force."

(Cong. Records, p. 5262.)

Senator Walsh of Massachusetts, who was a member of the Committee, said: "Mr. President, supplementing what the Senator from Pennsylvania has said, I want to say that there are comparatively few changes in these amendments from the present law. We were very careful to omit those provisions of the House bill which seem to change the present law *so far as it applies to benefits.* We felt that at this late hour in the session it would not be fair to make any substantial changes in existing law. Nearly all these changes are administrative, and have the approval and sanction of the Veterans' Bureau, and while the bill seems to cover a good many pages, in reality the changes in the present law are very few indeed."

(*Cong. Records,* p. 5264.)

The amended bill was returned to the House and while being considered, Mr. Hill of Maryland said: "What is left in the bill?"

Mr. Johnson of South Dakota, Chairman of the Committee

on World War Veterans' legislation, said: "There are some administrative provisions that will perhaps be of some benefit like the interpleader in reference to the payment of insurance. There are some other elements of the bill that will be of benefit to the men who have been guilty of what is known as wilful misconduct, but outside of those matters, I think there is nothing."

(*Cong. Records*, p. 5264.)

From the foregoing it is apparent that Congress, by the amendment of 1925, merely intended to add certain administrative provisions so, as Senator Reed said, the Veterans' Bureau would not be compelled to do the work practically of a Probate Court.

The Minnesota Supreme Court in its decision in the instant case said:

> "Doubtless the government can handle the matter more expeditiously by paying the money to the representative of the estate who will distribute it under the provision of the local courts rather than to undertake the determination of the existing and particular beneficiaries 'within the permitted class'."

The Bureau of War Risk Insurance up to March 4th, 1925, made payments to persons within the permitted class and to such of them as would be entitled to the personal property of the insured.

Through all the years from 1917 to 1925, the dependents within the permitted class received the insurance.

After this amendment, as is shown in the case of *Reivich vs. United States, et al.*, Circuit Court of Appeals, 25 Fed. (2nd) 670, heretofore referred to, the Bureau commuted the payments after the designated beneficiary's death and paid same to the representative of the estate of the in-

sured whether the insured died before or after the amendment.

In the case just mentioned, the Court made this statement:

> "In May, 1925, Reivich was advised that formal proof of the death of the grandmother had been received, but that owing to the provisions of Section 303 of the Veterans' Act, as amended March 4, 1925 (38 U. S. C. A., Sec. 514), the remaining payments should be commuted and paid to the estate of the insured."

In the above case the Court held that Reivich, the administrator and brother of the deceased War Veteran was "only a trustee for himself as an individual—and a naked trustee at that. Reivich, as administrator, would hold whatever he recovered in this case merely for the purpose of paying it over to himself, and neither creditors of the deceased nor next of kin nor, we presume, the state, has any interest whatever."

In *Perrydore vs. Hester,* 215 Ala. 268, 110 So. 403, the Court said:

> "The Act of March 4, 1925, provides that in the instant circumstances the fund shall be paid in lump to the 'estate of the insured.' 43 Stat. 1310, Sec. 14; U. S. Comp. Stat. 1925, Sup. Sec. 9127½-303. This provision is to be construed in connection with others still remaining in the statutes unrepealed; among these, the general provision of the Act of June 7, 1924, that the repeal of certain statutes in the compilation made by that act shall not affect any right or liability already accrued. 43 Stat. 630, Sec. 602 (U. S. Comp. St., Sec. 9127½-602).
>
> "With reference to claims already accrued as here, the Act of March 4, 1925, we think, is to be considered administrative in character.

"To relieve the Veterans' Bureau of the task of ascertaining the persons entitled to take in case of intestacy under the laws of the various states, and maybe foreign countries, the fund is paid to the personal representative of the estate, to be distributed by the local jurisdiction, but in accordance to law. An analogy is presented under our law in case of damages awarded to an administrator in actions for death by wrongful act. He is a mere trustee or conduit to receive and pass on the funds to those entitled free from the debts of the decedent.

"It is not intended to intimate a different view in case of death of the insured after the Act of March 4, 1925. After the soldier has carried his insurance for years, and under law made conditions that the benefit shall go to his widow and orphan without designating them beneficiaries, it will not be assumed that Congress intended such a change as would put on the soldier the active duty to name them beneficiaries, without very clear and express provisions to that end."

The representative of the deceased Veteran who receives the fund is a mere trustee and it is his duty to distribute it to persons within the permitted class who take as beneficiaries.

In re Hallbom's Estate, 229 N. W. 344.

In re Harris' Estate (Minn.), 229 N. W. 781.

In re Cross' Estate, 152 Wash, 459, 278 Pac. 414.

Tax Commissioner vs. Rife, 119 Ohio St. 83, 162, N. E. 390, 392.

Tax Commissioner vs. Rife, 27 Ohio App. 516, 162 N. E. 398.

Sizemore vs. Sizemore's Guardian, et al., 2 S. W. (2d) 395, 222 Ky. 713.

Reivich vs. United States, et al. (C. C. A.), 25 Fed. (2d) 670.

United States vs. Woolen (C. C. A.), 25 Fed. (2d) 673.

Salzer vs. United States, et al. (D. C.), 300 Fed. 764.

Salzer vs. United States, et al. (C. C. A.), 300 Fed. 767.

Perrydore, et al., vs. Hester, 215 Ala. 268, 110 So. 403.

In re Wanzel's Estate, 295 Pa. 419, 145 Atl. 512.

Watkins vs. Hall, State Tax Commissioner, 147 S. E. 876 (W. V.).

Sutton's Executor vs. Barr's Administrator, 219 Ky. 543, 293 S. W. 1075.

Re Succession of Geier, 155 La. 167, 99 So. 26.

Cassarello vs. United States, 271 Fed. 486.

In re Sabin's Estate, 227 N. Y. S. 120.

The case of *In re Cross' Estate,* 278 Pac. 414 (Wash.), decided in June, 1929, is a case very much in point and is an interesting case for the reason that on rehearing the above court reversed the opinions in two former cases rendered by it, namely, *In the Matter of the Estate of Margaret Cross, Deceased,* 266 Pac. 712, and *In re Cross' Estate,* 269 Pac. 339. In the rehearing attorneys appeared, *amici curiae,* for the American Legion. In this case the court reviews the acts of Congress relative to this kind of insurance and goes into the matter as to the construction of the statute and the intent of Congress. The Court in part said:

"Upon rehearing the correctness of these prior decisions involving the disposition of the proceeds of this insurance are very seriously questioned; it being contended that, upon the death of the designated beneficiary, Margaret Cross, the residue should go to the remaining survivors of LeRoy W. Cross, who are within 'the permitted class of beneficiaries,' as provided by the

War Risk Insurance Act, and that such persons would take as beneficiaries under the policy and not as heirs at law, and that it necessarily follows from this that the state inheritance tax could not be imposed upon the benefits so accruing."

After this the Court reviews the different Acts of Congress relative to War Risk Insurance, and then says:

"Even if we were to give no force whatever to the foregoing regulation of the bureau, we believe the whole intent and purpose of these acts is to exhaust the proceeds of this insurance for the benefit of those within the designated class, and that so long as there are such persons they must take, not as heirs at law, but as beneficiaries under the War Risk Insurance policy. It seems to us that any other reasoning would be contrary to the text and import of the entire act. If it be said that the proceeds of a policy shall be distributed to the heirs at law of the named beneficiaries when there exist persons 'within the permitted class,' then the act does not 'give to every * * * enlisted man * * * greater protection for themselves and their dependents.' It would also seem inconsistent for us to say that, although the act permits the insured to select the beneficiary, 'but only within the classes * * * provided,' still by the death of the designated beneficiary, some person or persons outside of 'the permitted class,' probably a total stranger, shall receive the residue. We do not believe that is the intention of the act, and we do not believe that it so provides. Benefits under such a policy of insurance as we have here first accrue to the designated beneficiary, who has but a lifetime interest, subject to certain limitations, and then to all of the beneficiaries

in the order of their priority 'within the permitted class.' All of these last mentioned beneficiaries have an inchoate or prospective benefit, and, if finally they do realize from the insurance, it must be as beneficiaries and not as heirs at law. The payment of the residue into the estate of the insured is only procedural, and is nevertheless to be distribtued only to persons 'within the permitted class.'

"This Court now feels that the proceeds of the insurance policy should be distributed, in the estate of LeRoy W. Cross, to those living at the time of the distribution who come within the permitted class in the order of their priority under the laws of the state of Washington, they to receive as beneficiaries under the policy and not as heirs at law. This conclusion would not permit the imposition of a state inheritance tax, as Section 22, C. 320, of the Act of June 7, 1924 (38 U. S. C. A., Sec. 454), provides that 'the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III, or IV; and shall be exempt from all taxation. * * *'

"While there is undoubtedly a diversity of opinion, we feel that the weight of authority and the better reasoned cases support our views. In the case of *Cassarello vs. United States* (D. C.), 271 F. 486, which contains facts similar to those in the instance case, the Court considered the congressional records as well as the rules and regulations of the federal department administering the act. From that opinion we quote the following pertinent matter."

The Court then quotes extensively from the case of *Cassarello vs. United States* (D. C.), 271 Fed. 486, relative to the Court finding the intent of Congress relative to this insurance. Then the Court proceeds as follows:

"We have quoted very fully from the foregoing opinion, for the reason that the Act of Congress here in question is there fully reviewed and the logic of the opinion seems unanswerable. Certainly the beneficiary who has not as yet received the money from the Government can not make a disposition of the money not permitted to the soldier himself. The War Risk Insurance Act was to take the place of, and be in a measure substituted for, unsatisfactory pension legislation, but the fundamental purpose of the Act was and is at all times to provide for the dependents and relatives of the soldier within the designated class, and the Government reserved and assumed the right to determine that only those of the designated dependents and relatives were to receive the benefits provided there were members of this class in existence—this in consideration of its furnishing the insurance at less than cost.

"In the instant case Margaret Cross did not, in so far as the War Risk Insurance was concerned, inherit anything. She received during her lifetime as beneficiary only, and at her death the other beneficiaries within the permitted class were substituted for Margaret Cross as beneficiaries.

"We now hold that the proceeds of the War Risk Insurance of LeRoy W. Cross should be distributed out of the estate of said insured to such persons, within the permitted class of beneficiaries now prescribed by the War Risk Insurance Act, as would, under the laws of this state, be entitled to the insured's personal property

in case of intestacy, and that those so taking do so as beneficiaries under said policy, and not as heirs at law, and that the proceeds so distributed are free from our state inheritance tax. Without the addition of the War Risk Insurance money the estate of Margaret Cross is free from any state inheritance tax.

"The judgment is affirmed, and the trial court is instructed to proceed by appropriate orders to distribute this War Risk Insurance money in accordance with this opinion."

In the case of *Tax Commission of Ohio vs. Rife, et al.*, 162 N. E. 390 (June 13, 1928), which was affirmed in, etc., the Court said:

"It is reasonable to assume that the purpose of Congress in making the payment to the administrator of the deceased soldier was for the benefit of the Government, to relieve the Government of the necessity of selecting and determining the next of kin of the deceased soldier to whom payment should be made, and to place this burden upon the administrator appointed in the state of the soldier's residence. The administrator becomes a mere trustee or conduit for the Government to make the payments to the persons entitled to the same under the provisions of the Federal Law. The intestate laws do not operate upon the decedent's property, but are referred to in order to determine who shall take the proceeds of the insurance. Congress has a right to adopt the course of descent prevailing in the state of the residence of the soldier, and the proceeds of the insurance therefore pass under the federal act, the intestate laws of Ohio being adopted as a standard or guide for ascertaining the next of kin to whom payment shall be made."

The above Court also said:

"However, the proceeds of War Risk Insurance are a definite kind of property, differing from the ordinary property of a soldier's estate, and are in the nature of a beneficence or gratuity, bounty or pension, affecting the rights of the soldier and his dependents, upon one side, and the Government of the United States, as a part of its war policy, upon the other side. This distinct class of property by federal enactment is not subject to the claims of creditors, or taxation, and is solely for the benefit of the soldier and his dependents and next of kin."

In the case of *In re Wanzel's Estate*, 145 Atl. 512, 295 Pa. 419, the Court said:

"The question involved is whether, when such a fund is paid by the federal government to the estate of a deceased soldier, to be distributed in accordance with the intestate laws of the domicile of the decedent, the fund involved can be taxed by the state. In answering this question in the affirmative, the Court below relied on our decision in *Ogilvie's Estate*, 291 Pa. 326, 139 A. 826, and on two New York Surrogate's Court decisions, namely, *Schaeffer's Estate*, 130 Misc. Rep. 436, 224 N. Y. S. 305, and *Dean's Estate*, 131 Misc. Rep. 125, 225 N. Y. S. 543.

"As to the first of the above named cases, it is sufficient to say that no question of taxation was there involved, and as to the others, that we do not agree with the determination there reached. Our view agrees with the decision in *Tax Commission of Ohio vs. Rife*, 119 Ohio 83, 162 N. E. 890, and since the facts there involved

closely approximate those in the present case, we shall quote liberally from the opinion filed in that case."

In *United States vs. Woolen* (C. C. A.), 25 Fed. (2d) 673, on page 676, the court said:

"We are thus confirmed in concluding that this amended Section 303 controls all installments which became payable after Betty Woolen's death, and that the plaintiff, as surviving husband and in her right, cannot recover therefor. If he is in fact the sole person within the permitted class interested in the estate of the insured, that will appear when proceedings are had to make him the official representative of the estate; but it does not appear by this record."

In *Sizemore vs. Sizemore's Guardian, et al.*, 2 S. W. (2d) 395, 222 Ky. 713, the Court held that the deceased soldier's mother on the death of the soldier's infant son who was the designated beneficiary, was entitled to installments of War Risk Insurance as against the soldier's divorced wife, mother of the designated beneficiary.

In *Watkins vs. Hall, State Tax Commissioner*, 147 S. E. 876 (W. V.), decided in 1929, is the following:

"The tax commissioner takes the position that once the amount has been paid to the administrator of the insured it becomes subject to the tax laws of the state, and that the distribution thereof by the administrator to the several distributees constitutes transfer in contemplation of Chapter 33, Code; in other words, that the process through which the fund passes from the Government to the beneficiaries of the estate constitutes two transfers—one from the Government to the administrator, and the other from the administrator to the beneficiaries of the estate. On the other hand, the appellees

contend that it constitutes but one transfer; that the administrator is merely a conduit through whom the fund passes to the beneficiaries.

"In the case of *In re Geier,* 155 La. 167, 99 So. 26, 32 A. L. R. 353, decided prior to the enactment of the World War Veterans' Act of 1924, the Supreme Court of Louisiana held that payments by the Government were not subject to a transfer tax since the parties within the permitted class of beneficiaries took as beneficiaries rather than heirs. In that case the beneficiary designated in the policy had died before the insured, and, no other beneficiary having been substituted, the insurance at the death of the insured became payable, under the provisions of the statute, to the surviving father and brothers and sisters of the insured, in accordance with the provisions of the act that, if the designated beneficiary does not survive the insured, the insurance shall be payable to such person or persons, within the permitted class of beneficiaries, as would, under the laws of the state of the residence of the insured, be entitled to his personal property in case of intestacy.

"The Supreme Court of Appeals of Ohio, in the case of *Tax Commission of Ohio vs. Rife,* 119 Ohio St. 83, 162 N. E. 390, a case similar in every respect with the instant one, adopted the position taken by the Louisiana court, and, in dealing with the change of 1925, providing that the money be turned over to the estate of the decedent, said: 'It is reasonable to assume that the purpose of Congress in making the payment to the administrator of the deceased soldier was for the benefit of the Government, to relieve the Government of the necessity of selecting and determining the next of kin of the deceased soldier to whom payment should be

made, and to place this burden upon the administrator appointed in the state of the soldier's residence. The administrator becomes a mere trustee or conduit for the Government to make payments to the persons entitled to the same under the provisions of the Federal law. The intestate laws do not operate upon the decedent's property, but are referred to in order to determine who shall take the proceeds of the insurance.' That position we believe to be a sound one. That Congress has a right to adopt the course of descent prevailing in the state of the residence of the soldier, there can be no question. The proceeds of the insurance, therefore, passed under the Federal Act. In other words, the intestate laws of the state of the residence of the soldier was simply adopted as a means for ascertaining the next of kin to whom payment should be made. Such construction is supported by the further fact that in case of an escheat the same shall be to the United States rather than the state.

"It being apparent that the brothers and sisters take as beneficiaries under the contract of insurance, that the intestate laws of this state have been set in motion for the purpose of carrying out certain provisions of a war measure in regard thereto, and that the terms of said war measure expressly exempts from all taxation insurance payable thereunder, the decree of the lower court will be affirmed."

In *Tax Commission of Ohio vs. Rife, et al.*, 162 N. E. 398, the Court said:

"This insurance was provided for and awarded when the nation was at war. It was a protective measure for the Government, as well as for the insured, and the use

of the language, 'shall be exempt from all taxation,' in view of the fact that the Government designated the permitted class and that the laws of Ohio are subject to the laws of the United States on this question, leaves no doubt that the Act meant what it said when it provided that such insurance 'shall be exempt from all taxation * * *'.

"We do not question this statement, but, whether it is the property or the right of succession that is taxed, a part of the proceeds of the policy is thus being diverted from those to whom the Government said it should go, and paid to the state of Ohio as a tax. In our view, the statute of the United States, which provides that this insurance shall be exempt from all taxation, controls.

"The judgment of the Court of Common Pleas is affirmed."

The decision in the case of *In re Sabin's Estate,* 227 N. Y. S. 120, although reversed in part by an intermediate appellate court, is well written. In part it is as follows:

"'It is but reasonable to assume that the Government, by the amendment of March 4, 1925, did not intend to do violence to the substantial terms of the contract, but did intend to obviate the difficulty of ascertaining and making payments to beneficiaries, and for this purpose directed that the money still owing on the contract of insurance should be paid to the estate of the soldier—that is, to the legal representative thereof—and that said representative should pay and distribute said money among the beneficiaries, who are entitled thereto under the terms of the contract. The amendment directs payment of the balance owing on the certificate of insurance

to the estate of the soldier, but does not refer to the contract of insurance, and the only reasonable construction is that the contract remains in force in every respect, except that the Government has directed the payment to be made to the estate of the soldier. The amendment does not say that this money shall become a part of the soldier's estate at his death or at any other time. It should not be assumed, even if the Government had the power so to do, that it changed or intended to change the contract in any material part, except as is expressly stated in the amendment.

"As I understand it, the contention of the state tax commission is that by the amendment of March 4, 1925, the money in question became in fact a part of the estate of the soldier, the same as though he had been the absolute owner thereof at the time of his death, and that when it passes from the estate of the soldier to his next of kin it becomes subject to a transfer tax. If this contention is correct, the effect of the amendment is that the Government takes the money, which it does not own, but owes, from the beneficiaries designated by the soldier, who do own it and gives it to the estate of the soldier, who has been dead for years, and who had no interest in it at his death, and thereby subjects it to a transfer tax and to debts, in direct violation of the contract of insurance.

"Such construction should be given this contract and said amendment, if reasonably possible, as to pass the money in question into the hands of blood relatives, and not into the hands of strangers, who might take by inheritance or representation from a deceased wife or from next of kin of the soldier, as must often happen if the insurance money becomes in fact a part of the sol-

dier's estate, and especially as in many cases the soldier may have been dead 20 years before the payment is made, and said contract should be so construed as to exempt all payments of insurance from transfer tax, and thus not violate the terms of the contract, if such construction can be reasonably given."

In the case of *Re Succession of Geier, Deceased, et al.*, 155 La. 167, 99 So. 26, 32 A. L. R. 353, the Supreme Court of Louisiana said:

"Our attention has been called to the cases which hold that a state may impose an inheritance tax on the obligations and securities of the United States which form part of a succession. In those cases the property fell into the succession, no question of the violation of a contract was raised, and the decisions were based upon the finding that the tax was a tax upon the right to inherit and not a tax upon the property. In this case a contract is involved, and the tax sought to be enforced is a tax upon money paid out by the Government under the provisions of the War Risk Insurance Act to the beneficiaries of a deceased service man. It may, therefore, be said that the jurisprudence established by the cases referred to can have no application to this case.

"For these reasons we are of the opinion that the beneficiaries of the deceased service men, who receive insurance money under the provisions of the War Risk Insurance Act, do not take as heirs. They come within the permitted class of beneficiaries, because they are the heirs at law or next of kin of the deceased service man, but they are designated in the Act as beneficiaries, and they take as such under the contract of insurance to the same extent and in the same manner as the bene-

ficiary named in the policy of insurance would take in the event such beneficiary survived the insured."

The insurance fund should be distributed to those living at the time of distribution who come within the permitted class, in the order of their priority under the laws of descent of personal property in the particular state.

Some courts have held that those who should take this fund shall be determined as of the date of the death of the insured. Other courts hold that the next of kin who should take this fund are those who are the surviving next of kin of the insured at the time of the death of the designated beneficiary, and in support of this proposition these courts hold that by so holding the fund is bound to go to the next of kin of the deceased veteran, and not to strangers, as might happen in many cases if the court should hold that it goes to those who are the next of kin at the time of the death of the insured.

The courts who reach the conclusion that it goes to the next of kin at the time of the death of the beneficiary take into consideration the contract of insurance, which consists of the application, the certificate, the regulation of the Bureau of War Risk Insurance and the Acts of Congress relative thereto. These courts hold that when the amendment of 1925 was enacted it was not the intention of Congress to turn this insurance fund into the estate for the benefit of strangers or for the benefit of creditors, but that it was done to do away with the difficulty of ascertaining by the Insurance Bureau the next of kin at the death of the beneficiary in the several states of the Union, and that it was passed into the hands of the administrator as a mere trustee to be passed on to the next of kin who survive at the time of the death of the designated beneficiary.

In addition to the Minnesota cases, *In re Hallbom's Estate*, 229 N. W. 334, and *In re Harris' Estate*, 229 N. W. 781, the following cases are in point in this subdivision of the brief:

The case of *Sutton's Executor, et al., vs. Barr's Administrator, et al.*, 293 S. W. 1075 (Ky.), decided in April, 1927, holds that the fund should be distributed to the next of kin as beneficiary as of the date of the death of the original beneficiary. In the above case the law relative to this insurance fund is reviewed and in part the Court said:

"It is earnestly insisted for appellants that as by the Act of Congress this money is paid to the administrator of the deceased, the administrator holds it for distribution under the statute of Kentucky, and that the fact that the mother was the beneficiary in the policy in no way lessens her rights as the heir of her son. In other words, it is insisted that the mother takes this money as the heir of her son, and that she is no less entitled to it than she would be if she had not been named as the beneficiary in the policy.

"On the other hand, it is insisted that under the Acts of Congress, taken as a whole, the heirs of the son in being at the time of the death of the beneficiary take the property and not those who were his heirs at his death. The Circuit Court adopted this view. This question is not new, but we have not been able to find any express authority upon it. It is suggested in *Salzer vs. United States* (D. C.), 300 F. 764, but not decided.

"Some force must be given to the provision of the original Act that the insurance shall only be paid to certain classes of persons. It was the plain purpose of Congress in making this provision to confine the benefits of the insurance to the relatives of the deceased. If any other construction is adopted in cases like this, the

bulk of the fund might go to strangers to the deceased or persons having no natural claim on him. To illustrate, the purpose of the Act was to protect the beneficiary, but it was not the purpose of the Act to protect as in this case, the second husband of the beneficiary. If Mrs. Sutton took this fund she could devise it as she pleased and so all the interest of those naturally connected with the deceased soldier could be defeated. We must give some force to the evident intention of Congress that if the designated beneficiary did not survive the insured the insurance should be payable to such persons within the permitted class of beneficiaries as would be entitled to his personal property in case of intestacy. Plainly the same rule should apply where the beneficiary survives the insured but dies before the money is payable.

"The judgment of the Circuit Court is in accord with the spirit and purpose of the Acts of Congress. Any other construction of the Act would lead to a distribution of the fund in a way plainly not contemplated by Congress."

The Supreme Court of Washington in the case of *In re Cross' Estate*, 278 Pac. 414, in holding that the insurance should be distributed to the next of kin of the deceased war veteran living at the time of the distribution as beneficiary, said:

"While there is undoubtedly a diversity of opinion, we feel that the weight of authority and the better reasoned cases support our views. * * *

"This Court now feels that the proceeds of the insurance policy should be distributed, in the estate of LeRoy W. Cross, to those living at the time of the distribution

who come within the permitted class in the order of their priority under the laws of the state of Washington, they to receive as beneficiaries under the policy and not as heirs at law. This conclusion would not permit the imposition of a state inheritance tax as Section 22, C. 320, of the Act of June 7, 1924 (38 U. S. C. A., Sec. 454), provides that 'the compensation, insurance, and maintenance and support allowance payable under Titles II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III or IV; and shall be exempt from all taxation. * * *'"

In *Salzer vs. United States,* 300 Fed. 764 (New York), on page 766 is found the following:

"For the reasons stated by Judge Witmer in *Cassarello vs. United States* (D. C.), 271 Fed. 486, affirmed (C. C. A.) 279 Fed. 396, the named beneficiary has no vested interest in the insurance, and the estate of, or those claiming under, the named beneficiary thereby acquire no interest in the installments falling due after the beneficiary's death.

"It happens, however, in the instant case, that the named beneficiary is also the identical person to whom the insurance would have been payable if no beneficiary had been named. It may be conceded that naming the wife as beneficiary does not lessen any interest that her estate would have in the installments accruing after her death, had some one else been named as beneficiary, or had no beneficiary been designated. The real question is: Does the person who at the death of the insured would take his personal property in case of intestacy acquire a vested interest in all subsequent installments,

even though a designated beneficiary acquires no such vested interest?

"It seems clear to me that this is not the proper construction of the act. Prior to the amendment of December 24, 1919 (41 Stat. 371), the insurance was payable only to certain classes. If in this case the wife, as the person entitled to her husband's estate on intestacy, took at his death a vested interest in the installments payable after her own death, then the installments might go to persons not within the designated classes. Plaintiff endeavors to avoid this conclusion by admitting that only such representatives of the wife as would come within the permitted class of beneficiaries could take. There is, however, in my judgment, nothing in the Act prior to the amendment of December 24, 1919, which justifies such construction. The person entitled to the insurance, whether on the death or in the absence of a named beneficiary, must trace his claim directly from the insured."

The Circuit Court of Appeals in *Salzer vs. United States*, 300 Fed. 767, sustained the decision in the case last mentioned.

In *United States vs. Woolen*, Circuit Court of Appeals, Sixth Circuit, 25 Fed. (2d) 673, on page 676, the Court said:

"The mother, the beneficiary named, had the right, under the law as it stood when the soldied died, to bring a suit upon this policy, as she did, to take the judgment of the court. She died in November, 1922, with the suit pending. The nature of the right of a named beneficiary, as affected by his death after the death of the insured, is fully considered and the pertinent certificatory and statutory provisions quoted, in our opinion in

Reivich vs. U. S. (C. C. A.) 25 F. (2d) 670, this day filed. From that review, as applicable here, we conclude that Betty Woolen at her death had a vested interest in those installments which had then become payable, being those for a period of substantially two years, which right would pass under Tennessee laws to her successors in title, but that she had in the remaining installments no interest which survived her death, and that, as to those future items, those entitled to her property in case of intestacy took nothing. * * *

"However, no steps were taken by the Bureau and no change in the relationship of these parties occurred between the adoption of this revised section on June 7, 1924, and its amendment on March 4, 1925. By this amendment the section was made to read as quoted in the margin. *There are ambiguities in this section,* but none are suggested which may apply to this case, except reference to the last payment made under an existing award. There was here, after November, 1920, no existing award; but we observe that the section plainly applies at once to cases where upon the insured's death there is no surviving designated beneficiary, and where, therefore, there could have been no award prior to the incidence of this statute. Hence this specific provision as to the date of computing present value can be intended to apply only to the cases where there was an existing award, leaving other cases without specified computation date.

"We are thus confirmed in concluding that this amended section 303 controls all installments which became payable after Betty Woolen's death, and that the plaintiff, as surviving husband and in her right, cannot recover therefor. *If he is in fact the sole person within*

the permitted class interested in the estate of the insured, that will appear when proceedings are had to make him the official representative of the estate; but it does not appear by this record." (Italics ours.)

In *Sizemore vs. Sizemore's Guardian, et al.*, 2 S. W. (2d) 395, on page 397, the Court said:

"It is apparent from the Acts of Congress and the decisions that the claim of a person to be within the permitted class, and entitled to the insurance upon the death, or in the absence, of a designated beneficiary, must be derived from the insured soldier. As the divorced wife of the soldier has no right to inherit from him, she has no claim against the fund in the hands of his administrator. She had no right that was affected by the legislation later than the death of the soldier. Her only right was to inherit the property of her deceased child. That child did not possess or have any right to the unpaid insurance, unless he lived long enough to collect the installments as provided by the law and the insurance contract made pursuant thereto. As he did not live, it did not become his property."

In re Harris' Estate (Minn.), 229 N. W. 781, on page 783 the Court said:

"We have, however, very recently handed down the opinion in the case of *In re Estate of Jacob Hallbom*, 229 N. W. 344. There the precise issue was whether the insurance money paid to the administrator was subject to the debts of the deceased. This court followed the Ohio, Pennsylvania, and other courts, holding that these insurance payments do not become a part of the estate of a deceased soldier, or of his beneficiary; that they do not pass by the intestate laws of this state, but go to

the next of kin within the designated class by virtue of the contract and federal law; that the administrator is but a conduit or agent designated to transfer the fund to those entitled thereto; that the Probate Court is appointed to determine who, within the permitted class, are next of kin and entitled to the fund; and that this is only a matter of procedure for the convenience of the federal government in disbursing the money."

In the case of *In re Sabin's Estate*, 227 N. Y. S. 120, the Court said:

"Such construction should be given this contract and said amendment, if reasonably possible, as to pass the money in question into the hands of blood relatives, and not into the hands of strangers, who might take by inheritance or representation from a deceased wife or from next of kin of the soldier, as must often happen if the insurance money becomes in fact a part of the soldier's estate, and especially as in many cases the soldier may have been dead 20 years before the payment is made."

In *Watkins vs. Hall, State Tax Commissioner*, 147 S. E. 876 (W. Va.), the Court said:

"The tax commissioner takes the position that once the amount has been paid to the administrator of the insured it becomes subject to the tax laws of the state, and that the distribution thereof by the administrator to the several distributees constitutes transfer in contemplation of Chapter 33, Code; in other words, that the process through which the fund passes from the Government to the beneficiaries of the estate constitutes two transfers—one from the Government to the administrator, and the other from the administrator to the bene-

ficiaries of the estate. On the other hand, the appellees contend that it constitutes but one transfer; that the administrator is merely a conduit through whom the fund passes to the beneficiaries."

Further on the Court said:

"The Supreme Court of Appeals of Ohio, in the case of *Tax Commission of Ohio vs. Rife*, 119 Ohio St. 83, 162 N. E. 390, a case similar in every respect with the instant one, adopted the position taken by the Louisiana court, and, in dealing with the change of 1925, providing that the money be turned over to the estate of the decedent, said: 'It is reasonable to assume that the purpose of Congress in making the payment to the administrator of the deceased soldier was for the benefit of the Government, to relieve the Government of the necessity of selecting and determining the next of kin of the deceased soldier to whom payment should be made, and to place this burden upon the administrator appointed in the state of the soldier's residence. The administrator becomes a mere trustee or conduit for the Government to make the payments to the persons entitled to the same under the provisions of the Federal Law. The intestate laws do not operate upon the decedent's property, but are referred to in order to determine who shall take the proceeds of the insurance.' This position we believe to be a sound one. That Congress had a right to adopt the course of descent prevailing in the state of the residence of the soldier, there can be no question. The proceeds of the insurance, therefore, passed under the Federal Act. In other words, the intestate laws of the state of the residence of the soldier was simply adopted as a means for ascertaining the next of kin to

whom payment should be made. Such a construction is supported by the further fact that in case of an escheat the same shall be to the United States, rather than the state.

"It being apparent that the brothers and sisters take as beneficiaries under the contract of insurance, that the intestate laws of this state have been set in motion for the purpose of carrying out certain provisions of a war measure in regard thereto, and that the terms of said war measure expressly exempts from all taxation insurance payable thereunder, the decree of the lower court will be affirmed."

The insurance fund in question is not subject to the claims of creditors of the insured nor of any of the ultimate beneficiaries. (38 U. S. C. A., Sec. 454.)

There is no doubt but that when the deceased veteran, Jacob E. Hallbom, was in France and took out this insurance he took it out for the benefit of his father and mother. His father, the original beneficiary, having died, the whole fund should have gone to his dependent mother exempt from the claim of creditors.

Under his contract of insurance with the Government, he had every reason to believe that when he departed from this life the insurance fund involved in this case would not be subject to the claims of his creditors or the claims of the creditors of his beneficiaries.

The legislative purpose in creating War Risk Insurance is set forth in the Act, Oct. 6, 1917, c. 105, Sec. 2, 40 Stats., 409 Barnes Fed. c. 10306, to be "to give to every commissioned officer and enlisted man * * * greater protection FOR THEMSELVES AND THEIR DEPENDENTS."

It would seem that this primary object should be kept in mind.

It is apparent that it was not the Government's purpose to create estates for the creditors of those who served in the World War.

This fact is very apparent from the contract of insurance, from the law relative thereto, and from the regulations of the Department, the Bureau of War Risk Insurance.

On the back of this certificate, under the heading "IMPORTANT NOTICE," is the following:

> "The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable and is not subject to the claims of the creditors of the insured or of the beneficiaries."

The laws relative to this insurance show that it was never the intentions of Congress to vest any of this insurance in the estate of the insured so as to subject it to the payment of the claims of his creditors, for the Act provides that in case the estate of the insured would escheat to the state, then and in that event it shall not be paid to his estate, but shall escheat to the United States. This part of the Act of Congress referred to is as follows:

> "Provided further * * * that in cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriations. This section shall be deemed to be in effect as of October 6, 1917." (43 Stats. at L. 1302, 1310, c. 553, Sec. 303, March 4, 1925.) (38 U. S. C. A., Sec. 514).

The cases which are now referred to are those pertaining

to the question as to the fund being exempt from the debts of the decedent and his beneficiary and also exempt from taxation by the different states. Cases relative to the right of the state to tax are certainly in point. It seems that they would be particularly in point, for if under this exemption statute the state has no right to tax the insurance fund as a part of the deceased veteran's estate, how then can a creditor of the deceased veteran claim a greater right than the state?

In *Perrydore, et al., vs. Hester,* 110 So. 403, the Supreme Court of Alabama, in determining whether the proceeds of the insurance payable to the estate of the insured were exempt from the debts of the insured, said:

> "An analogy is presented under our law in case of damages awarded to an administrator in actions for death by wrongful act. He is a mere trustee or conduit to receive and pass on the funds to those entitled, free from the debts of the decedent."

In the above case is also found the following:

> "If the fund here involved is subject to the terms of the original Act, we think it clear that upon the death of S. W. Hester, father of the insured and designated beneficiary, prior to the death of the insured, Robert L. Hester, no other beneficiary having been named, the insurance, upon the death of the insured, became payable to his widow and only child, and is not subject to the claims of creditors of the estate of the insured.
>
> "The positive provisions against assignment, against liability for debt and for change of beneficiary at will, forbid any valid claim based upon a pledge or agreement that the insurance should stand as security for an indebtedness growing out of loans or advances from

S. W. Hester to Robert L. Hester during the lifetime of the former and while he was the designated beneficiary of the insurance."

The Supreme Court of Ohio, in the case of *Tax Commission of Ohio vs. Rife, et al.*, 162 N. E. 390 (June 13, 1928), said:

"It is reasonable to assume that the purpose of Congress in making the payment to the administrator of the deceased soldier was for the benefit of the government, to relieve the government of the necessity of selecting and determining the next of kin of the deceased soldier to whom payment should be made, and to place this burden upon the administrator appointed in the state of the soldier's residence. The administrator becomes a mere trustee or conduit for the government to make the payments to the person entitled to the same under the provisions of the Federal Law. The intestate laws do not operate upon the decedent's property, but are referred to in order to determine who shall take the proceeds of the insurance. Congress has a right to adopt the course of descent prevailing in the state of the residence of the soldier, and the proceeds of the insurance therefore pass upon the Federal Act, the intestate laws of Ohio being adopted as a standard or guide for ascertaining the next of kin to whom payment shall be made."

The above Court also said:

"However, the proceeds of War Risk Insurance are a definite kind of property, differing from the ordinary property of a soldier's estate, and are in the nature of a beneficence or gratuity, bounty or pension, affecting the rights of the soldier and his dependents, upon one side,

and the government of the United States, as a part of its war policy, upon the other side. This distinct class of property by federal enactment is not subject to the claims of creditors, or taxation, and is solely for the benefit of the soldier and his dependents and next of kin."

The Court also said:

"This contract of insurance was between the government of the United States on one side, and the soldier, Earl Stewart, on the other side. It provided, in substance, that in the event of the death of said Earl Stewart the sum agreed upon, in stipulated amounts, should be paid to the beneficiary named in the policy. Does the fact that the United States government has taken advantage of the statutes of descent and distribution of the state of Ohio to determine who shall receive the funds in question make such fund any less a payment direct by the United States to such benficiaries, provided they are within the permitted class? It is to be noted that there shall be no escheat to the state of Ohio, as would be the case in the event the state statutes controlled entirely; but by the Act of March 4, 1925, the insurance shall not be paid to the estate of the insured, but shall escheat to the United States and shall be credited to the United States government life insurance fund, or the military and naval insurance appropriation, as may be appropriate. * * *

"Entertaining the view that Congress has power to provide for payment to the next of kin of the deceased soldier in such manner as it may determine, and that such proceedings being for the benefit of dependents, constitute a special, distinct class of property, different

from a general estate of a deceased soldier, such fund, by Section 22 of the Act, is exempt from the inheritance tax under the Ohio statute. The judgment of the Court of Appeals is affirmed."

In re Wanzel's Estate, 145 Atl. 512 (Penn.), the Court said:

"The question involved is whether, when such a fund is paid by the federal government to the estate of a deceased soldier, to be distributed in accordance with the intestate laws of the domicile of the decedent, the fund involved can be taxed by the state. In answering this question in the affirmative, the court below relied on our decision in *Ogilvie's Estate,* 291 Pa. 326, 139 A. 826, and on two New York Surrogate's Court decisions, namely, *Schaeffer's Estate,* 130 Misc. Rep. 436, 224 N. Y. S. 305, and *Dean's Estate,* 131 Misc. Rep. 125, 225 N. Y. S. 543.

"As to the first of the above named cases, it is sufficient to say that no question of taxation was there involved, and, as to the others, that we do not agree with the determination there reached. Our view agrees with the decision in *Tax Commission of Ohio vs. Rife,* 119 Ohio 83, 162 N. E. 390, and since the facts there involved closely approximate those in the present case, we shall quote liberally from the opinion filed in that case."

In re Cross' Estate, 278 Pac. 414 (Wash.), the Court said:

"This court now feels that the proceeds of the insurance policy should be distributed, in the estate of LeRoy W. Cross, to those living at the time of the distribution who come within the permitted class, in the order of their priority under the laws of the state of Washington, they to receive as beneficiaries under the policy and not as heirs at law. This conclusion would

not permit the imposition of a state inheritance tax, as Section 22, c. 320, of the Act of June 7, 1924 (38 U. S. C. A., Sec. 454), provides that 'the compensation, insurance, and maintenance and support allowance payable under Titles II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III or IV; and shall be exempt from all taxation.'"

In the case of *Tax Commission of Ohio vs. Rife, et al.*, 162 N. E. 390, the Supreme Court in part said:

"The provision of Section 22 of the Act of June 7, 1924, providing for exemption from taxation, must dominate over the succession tax statutes of Ohio, because of the provision of Paragraph 2, Art. VI, of the United States Constitution, providing that:

"'This Constitution, and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.'

"As was held by Chief Justice Marshall in *McCulloch vs. Maryland*, 4 Wheat. 316, 436, 4 L. Ed. 579, 609:

"'The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unadvoidable consequence of that supremacy which the Constitution has declared.'"

In the case of *Wilson vs. Sawyer*, 6 S. W. (2nd Series) 825 (Ark.), is the following:

"In the case of *Payne vs. Jordan*, 36 Ga. App. 787, 138 S. E. 262, it was held by the Court of Appeals of Georgia that a house purchased with proceeds only of War Risk Insurance payable under the War Risk Insurance Act of Congress approved October 6, 1917 (38 U. S. C. A., Secs. 287, 357, 502), was not subject to execution. In a case of the same style, 152 Ga. 367, 110 S. E. 4, it was held by the Supreme Court of Georgia that funds actually paid by the government to the beneficiary of an insurance policy, and by her deposited in a bank, are not subject to garnishment. In the case of *Succession of Geier*, 155 La. 167, 99 So. 26, 32 A. L. R. 353, the Supreme Court of Louisiana held that the heirs at law, who received insurance from a deceased service man, under the provisions of the War Risk Insurance Act, received the money as benficiaries, and not as heirs, and that the money so received was not subject to the payment of an inheritance tax under the laws of that state taxing the right to inherit.

"The World War Veterans' Act of 1924 contains substantially the same exemption from seizure as is found in the War Risk Insurance Act, and the cases cited which construe the latter Act are applicable here. We think the manifest purpose of the legislation making provision for World War veterans was to devote the benefactions there provided to the sole use of the beneficiaries, and that the same should not be subject to the demands of creditors, even after the money had come into their hands, or was held by another for their benefit.

"The writ of garnishment was therefore properly

quashed and the judgment of the court so ordering is affirmed."

We also quote from *Watkins vs. Hall, State Tax Commissioner*, 147 S. E. 876 (W. V.), decided in 1929, as follows:

"The tax commissioner takes the position that once the amount has been paid to the administrator of the insured it becomes subject to the tax laws of the state, and that the distribution thereof by the administrator to the several distributees constitutes transfer in contemplation of Chapter 33, Code; in other words, that the process through which the fund passes from the government to the beneficiaries of the estate constitutes two transfers—one from the government to the administrator, and the other from the administrator to the beneficiaries of the estate. On the other hand, the appellees contend that it constitutes but one transfer: that the administrator is merely a conduit through whom the fund passes to the beneficiaries.

"In the case of *In re Geier*, 155 La. 167, 99 So. 26, 32 A. L. R. 353, decided prior to the enactment of the World War Veterans' Act of 1924, the Supreme Court of Louisiana held that payments by the government were not subject to a transfer tax since the parties within the permitted class of beneficiaries took as beneficiaries rather than heirs. In that case the beneficiary designated in the policy had died before the insured, and, no other beneficiary having been substituted, the insurance at the death of the insured became payable, under the provisions of the statute, to the surviving father and brothers and sisters of the insured, in accordance with the provisions of the Act that, if the designated beneficiary does not survive the insured, the in-

surance shall be payable to such person or persons, within the permitted class of beneficiaries, as would under the laws of the state of the residence of the insured, be entitled to his personal property in case of intestacy.

"The Supreme Court of Appeals of Ohio, in the case of *Tax Commission of Ohio vs. Rife,* 119 Ohio St. 83, 162 N. E. 390, a case similar in every respect with the instant one, adopted the position taken by the Louisiana court, and, in dealing with the change of 1925, providing that the money be turned over to the estate of the decedent, said: 'It is reasonable to assume that the purpose of Congress in making the payment to the administrator of the deceased soldier was for the benefit of the government, to relieve the government of the necessity of selecting and determining the next of kin of the deceased soldier to whom payment should be made, and to place this burden upon the administrator appointed in the state of the soldier's residence. The administrator becomes a mere trustee or conduit for the government to make payments to the persons entitled to the same under the provisions of the Federal Law. The intestate laws do not operate upon the decedent's property, but are referred to in order to determine who shall take the proceeds of the insurance.' That position we believe to be a sound one. That Congress had a right to adopt the course of descent prevailing in the state of the residence of the soldier, there can be no question. The proceeds of the insurance, therefore, passed under the Federal Act. In other words, the intestate laws of the state of the residence of the soldier was simply adopted as a means for ascertaining the next of kin to whom payment should be made. Such construction is supported by the further fact that in the case of an

escheat the same shall be to the United States, rather than the state.

"It being apparent that the brothers and sisters take as beneficiaries under the contract of insurance, that the intestate laws of this state have been set in motion for the purpose of carrying out certain provisions of a war measure in regard thereto, and that the terms of said war measure expressly exempts from all taxation insurance payable thereunder, the decree of the lower court will be affirmed."

In *Tax Commission of Ohio vs. Rife, et al.*, 162 N. E. 398, the Court said:

"This insurance was provided for and awarded when the nation was at war. It was a protective measure for the government, as well as for the insured, and the use of the language, 'shall be exempt from all taxation,' in view of the fact that the government designated the permitted class and that the laws of Ohio are subject to the laws of the United States on this question, leaves no doubt that the Act meant what it said when it provided that such insurance 'shall be exempt from all taxation * * *'

"We do not question this statement, but, whether it is the property or the right of succession that is taxed, a part of the proceeds of the policy is thus being diverted from those to whom the government said it should go, and paid to the state of Ohio as a tax. In our view, the statute of the United States, which provides that this insurance shall be exempt from all taxation, controls.

"The judgment of the court of Common Pleas is affirmed."

In re Harris' Estate, 229 N. W. 781 (Minn.), the Court said:

"In view of the purpose of Congress to provide insurance, partly at government expense and in the nature of compensation, pension or bonus, partly for the benefit of the insured soldier, but largely for the benefit of his surviving dependents within the permitted class, it is no strained construction to hold that the legislative intent was to exempt the payments provided from all taxation, whether a property or an inheritance tax.

"The law is well established that an inheritance tax is not a property tax, and that exemption from property taxes does not exempt from an inheritance tax, but Congress no doubt has the power to exempt soldiers' compensation, pensions, and allowances paid by the federal government even from inheritance taxes, particularly so where same are paid under contract to a particular class of beneficiaries and do not pass by will or under state intestate laws."

In *Reivich vs. United States*, 25 Fed. (2d) 670, on page 673, the Court said:

"Reivich, as administrator, would hold whatever he recovered in this case merely for the purpose of paying it over to himself, and neither creditors of the deceased nor next of kin nor, we presume, the state, has any interest whatever."

In *Payne vs. Jordan, et al.*, 110 S. E. 4, the syllabus written by the Supreme Court of Georgia is in part as follows:

"Giving effect to the clear and manifest intention of Congress as expressed in the War Risk Insurance Act, as set out in the above question, the money paid over to a beneficiary, although deposited by her in bank, is not

subject to garnishment. The purpose of the Act is not merely to protect an allotment, made under the Act, from legal process while in the hands of the government, or its agencies, but to preserve the allotment itself from legal process against the beneficiary, except as against the claims of the government itself."

Further as to exemptions, *In re Murphy's Committee*, 236 N. Y. S. 343, modified and affirmed in 237 N. Y. S. 448.

CONCLUSION.

That for which the appellant is contending would result in changing the very terms of the war veteran's contract of insurance.

It would place such a construction on the amendment that violence would be done to the substantial terms of the contract and would bring about a result that was never in the minds of Congress or of the war veteran.

It would ignore the very purpose of the Act which were and are "to give to every commissioned officer and enlisted man * * * greater protection for themselves and for their dependents."

It would result in the fund being paid to persons not within the permitted class although the Act forbids and prevents the veteran from leaving the insurance to anyone other than those within the permitted class.

It would nullify that part of the application which by the Act is made a part of the contract and which provides:

"In case any beneficiary die or become disqualified after becoming entitled to an installment, but before receiving all installments, the remaining installments are to be paid to *such person or persons* within the permitted class of beneficiaries as may be designated in my

last will and testament, or in the absence of such will, as would under the laws of my place of residence be entitled to my personal property in case of intestacy."

Although the Act still provides and has always provided that:

"The compensation, insurance, and maintenance and support allowance payable under Parts II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation,"

it would allow the creditors of the war veteran and the creditors of his beneficiaries to help themselves to this fund although it is very plain that such a condition was never intended by Congress.

It would also allow the several states to deplete this fund by taxation, although the Act has always provided and still provides that it shall be exempt from all taxation.

Although the War Risk Insurance Bureau up to the time of the particular amendment always paid the fund to *those persons* who were the next of kin *within the permitted class* as provided by the contract of insurance, it would, as a number of the State Supreme Courts have held, many times result in the fund being paid to strangers instead of to the veteran's next of kin dependents.

It would result in the fund being paid to estates as such, not only of the veteran but to estates of deceased beneficiaries, although the intentions of Congress has always been that the fund should be paid to persons and to such persons as were within the permitted class.

Furthermore, the bulletin issued by the Bureau and upon which the insured had every reason to rely, provides that

"the remaining installments shall be payable to *such person or persons* within the permitted class of beneficiaries as would, under the laws of the insured's place of residence, be entitled to his personal property in case of intestacy."

It would ignore the oft repeated statements of committee members of Congress made during the passage of the Act that the fund was not for creditors nor for strangers but for the next of kin of those who served in the World War.

It would ignore the statements made by Senator Reed and others of the committtee to members of the Senate prior to the passage of the amendment that the change in the contract of insurance was merely administrative. Some of the statements being as follows:

> "We do not want to take the responsibility of passing on *matters of substance* at this late date, all we do is to correct the *administrative regularities*" (see page 21 of this Brief).

And

> "We were very careful to omit those provisions of the House Bill which seem to change the present law *so far as it applies to benefits*" (see page 23 of this Brief).

And

> "We struck it out because that would make the Veterans' Bureau practically a Probate Court and we thought they ought not to have to do that work" (see page 22 of this Brief).

As shown before in this brief, the above statements were made by the committee in explanation of the amendment and for the purpose of dispensing with the reading of same, hence it seems a greater weight should be given thereto in determining the intent of Congress relative to this amendment, which admendment was not an isolated statute but

only a part of the whole Act and of the contract of insurance.

Construing the amendment as administrative and merely procedural, as the State and Federal Courts referred to in this Brief have, then full force and effect is given to every part of the insurance contract.

It is respectfully submitted that the decision of the Supreme Court of Minnesota should be affirmed.

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SUPREME COURT OF THE UNITED STATES.

No. 176.—October Term, 1930.

Edward A. Pagel, as Administrator of the Estate of Jacob E. Hallbom, Decedent, Petitioner,
vs.
John G. MacLean, Administrator of the Estate of Selma Hallbom.

On Writ of Certiorari to the Supreme Court of the State of Minnesota.

[April 13, 1931.]

Opinion by Mr. Justice Stone.

In this case certiorari was granted, 282 U. S. —, October 13, 1930, to review a judgment of the Supreme Court of Minnesota, 179 Minn. 402, awarding to respondent's intestate the proceeds of war risk insurance issued to petitioner's intestate. The insured designated, as beneficiary, his father, who survived him, but who has since died. The insured was also survived by his mother, respondent's intestate, and by brothers and sisters.

The installments of insurance, as they fell due, were paid to the father until his death, when the value of the remaining installments was paid to petitioner, in accordance with § 303 of the World War Veterans' Act of June 7, 1924, 43 Stat. 625, as amended by the Act of March 4, 1925, 43 Stat. 1310, which provides:

"If no person within the permitted class be designated as beneficiary . . . by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all . . . installments . . . there shall be paid to the estate of the insured the present value of the . . . installments thereafter payable. . . ."

Section 300 declares that it is the policy of the Act to afford to commissioned officers and enlisted men "protection for themselves and their dependents", and provides that "the insurance shall be payable only to a spouse, child, grandchild, parent, brother [or]

sister . . .'' Section 22 states that the ''insurance . . . payable . . . shall not be subject to the claims of creditors of any person to whom an award is made . . .'' The insurance certificate, in accordance with § 402 of the Act of October 6, 1917, 40 Stat. 409, under which it was issued, stipulated that, in the contingency which has arisen, the insurance should be paid to such members of the permitted class as would be entitled to the personal property of insured under the intestacy laws of the state of his residence, and that it should not be ''subject to the claims of the creditors of the insured or of the beneficiaries.''

The question presented on this record and decided by the state court was whether, under the provisions of the Act and of the certificate of insurance, the administrator of the insured received the insurance as an asset of the estate subject to payment of debts and administration expenses, or as trustee for the benefit of such of the surviving members of ''the permitted class'' of beneficiaries as would be entitled to decedent's personal property under the laws of Minnesota, where he resided. The court held that despite the difference in language between § 303 and its earlier forms, § 402, Act of October 6, 1917, *supra;* § 15, Act of December 24, 1919, 41 Stat. 376, the members of the permitted class were to be preferred over creditors of the insured, and directed judgment for payment of the insurance to the mother, as the only person in the permitted class entitled to take the personal property of insured under the intestacy laws of the State.

Pending the application for certiorari, the mother died, and the suit was revived, after certiorari was granted, by substitution of her administrator as respondent. By reason of her decease, the question whether the mother alone of the permitted class is entitled to receive the proceeds of the insurance, in preference to the creditors of the insured, presented by the record and decided by the state court, has now become subsidiary to other questions, the determination of which is necessary to the disposition of the present suit and may render unnecessary any adjudication of the rights of the mother. Assuming, as the state court held, that the mother was entitled to the insurance in her lifetime, it does not follow that respondent, by virtue of his office as administrator, or claiming in the mother's right, is entitled to payment of the insurance under the judgment in her favor. That depends on the inter-

pretation of § 300, directing that the insurance "shall be payable only" to members of the permitted class, and on the question whether, under the provisions of the Act and of the certificate, the insurance should now go to the estate of the mother, to the creditors of the insured, or to the surviving brothers and sisters, if any, none of whom is a party to this suit. That question was not decided by the state court, for the review of whose judgment certiorari was granted, and is not one which can be disposed of on this record.

While, in such a situation, the writ may be dismissed, see *Kimball* v. *Kimball*, 174 U. S. 158, the present is not a proper case for such disposition, which might leave the judgment to be enforced by the respondent administrator without determination of his rights. In order that the state court may be free to deal adequately with the questions which must be determined in order to make appropriate distribution of the fund involved, the judgment will be vacated and the cause remanded for further proceedings not inconsistent with this opinion. *Missouri ex rel. Wabash Ry. Co.* v. *Public Service Commission*, 273 U. S. 126, 131; *Gulf, C. & S. F. Ry. Co.* v. *Dennis*, 224 U. S. 503, 509.

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.